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Editorial

Law is a system intrinsically tied to our understanding of the world and the construction of human societies. As it has been noted, *"[l]aw is totalizing … it is part of the narrative that gives meaning to our lives, a narrative that we both inherit and construct"*.[1] It is therefore not a static set of abstract rules, but a *structuring language*, a carrier of values and orientations. Like language, law is not static: it develops through interpretation, dialogue, and the historical context in which it operates.

A fundamental insight into the relationship between language and law is expressed by Rodolfo Sacco, for whom language and law are central expressions of a people's culture and tools of collective life.[2] In this sense, both legal understanding and interpretive activity are rooted in the interaction between diversity and rules, between cultural plurality and the tension toward uniformity.

As Sacco observed in an essay on identity and diversity in law and culture, published 25 years ago, had language not 'exploded' into countless idioms, it would have remained a handful of words. Similarly, had law not evolved into multiple systems, it would have remained bound to primitive forms of ownership and social order.[3] This invites us to consider language and law as dynamic, culturally embedded processes rather than fixed systems. In this regard, legal knowledge – the aim of comparative law - could also be identified as linguistic knowledge, as both these cultural universes, the legal and the linguistic one, can even be understood as a coherent system of concepts within its own scientific, but not natural order.

Sacco's reflections exhort us to consider law as language and language as law, in a continuous dialogue among norms, meanings, and contexts.

It is in this perspective that the articles collected in the current issue are situated—exploring the multiple ways in which language structures and conditions law, and *vice versa*. Whether dealing with Luxembourg's multilingual legal landscape, the shifting status of State languages in Europe, or the delicate balance between linguistic rights and national unity in the United States, each article interrogates the tension between legal norm and linguistic meaning—and how this tension is mediated precisely through language.

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[1] « Law is totalizing, … is part of the narrative that gives meaning to our lives, a narrative that we both inherit and construct. Like language, law offers us a form of understanding ourselves, understanding the world, and giving meaning to the relationship between the world and us», D. BONILLA MALDONADO, *Legal Barbarians. Identity, Modern Comparative Law and the Global South*, Cambridge University Press, Cambridge 2021, p. 2-4.

[2] See, for instance: R. SACCO, « Le droit muet », in *Revue trimestrelle du droit civil*, 94, pp. 783-796, 1995. R. SACCO, « Langue et droit », in *Rapports nationaux italiens au XVème Congrès International de Droit Comparé Bristol 1998*, Milano, 1998 ; R. SACCO, L. CASTELLANI (eds.), *Les multiples langues du droit européen uniforme*, Torino, 1999 ; R. SACCO, « Language and Law », in G. ZACCARIA, *Übersetzung im Recht/Translation in Law (Ars interpretandi)*, pp. 117–134, Münster, 2000.

[3] "Se la lingua non avesse voluto esplodere per far posto a mille idiomi differenti, essa sarebbe rimasta ciò che era al momento della sua prima apparizione, ovvero un insieme di cinque o sei vocaboli. Se il diritto non avesse voluto esplodere per far posto a mille sistemi differenti, esso avrebbe dovuto restare ciò che era al momento dell'umanizzazione dell'homo habilis, con una proprietà-possesso garantita dall'autotutela (vale a dire: dalla forza del possessore), dei quasi-contratti nascenti dal l'attività (ad es.: di caccia) svolta in comune, con una gerarchia sociale in centrata sull'autorità-forza del padre e sul prestigio di un personaggio dominante", R. SACCO, "La diversità nel diritto (A proposito di unificazione), Parte I Diversità, variazione, diritto", in *Rivista di diritto civile* – 2000, pp. 15-30, p. 18.

This issue of *CLL – Comparative Law and Language* brings together six contributions, each in its own way addressing the complex interaction between legal regimes and linguistic realities. Through empirical mapping, theoretical innovation, or normative critique, the authors collectively illuminate how language functions not only as a tool of legal expression but also as a contested site of identity, authority, and inclusion.

Two of the articles — by Indira Boutier and Loreno D'Angelo — highlight the persistent marginalization of linguistic rights in both legal doctrine and practice. In her French-language article, Boutier grounds her argument in an analysis of case law and migration policy, challenging the residual status of linguistic rights in international law. She reframes them not as secondary or derivative, but as constitutive of human dignity and democratic participation, calling for a fundamental reorientation of the legal imaginary. D'Angelo, in turn, brings this discussion into the U.S. context. His article traces the tension between a multilingual society and a political-legal push toward monolingualism, showing how case-law and public education policy often fail to protect minority languages and their speakers.

Przemysław Kusik shifts our attention to methodology. His article bridges comparative law and legal translation, proposing a more nuanced and pluralistic use of comparative legal methods in the service of translation. This "translational comparative legal analysis" invites translators not only to convey legal meaning but also to navigate systemic legal differences with methodological rigor—a perspective that holds promising implications for both fields.

The following articles focus on the language policies of states and their legal-institutional contexts. Borbora Tomečková presents an analysis of the relationship between *de jure* and *de facto* state languages in 42 European countries. Her empirical categorization provides a valuable tool for future work in both sociolinguistics and comparative constitutional law.

Stefaan Van der Jeught, on the other hand, offers an in-depth study of Luxembourg, the only EU member state with a fully trilingual legal system. His analysis not only dissects Luxembourg's legal framework, but situates it within broader historical and social trends, revealing tensions between national identity and multilingual governance.

Finally, Jan Engberg's book review prompts reflections not only on content but also on form. Reviewing four volumes originating from the same series of Summer schools on EU legislative language, Engberg raises a productive scepticism about the risks of repetitiveness in legal-linguistic research. At the same time, he acknowledges the enduring value of sustained empirical engagement with EU legal texts and processes—a theme that resonates throughout this issue.

Taken together, the six articles reveal how language and law are co-constitutive: the ways we legislate, adjudicate, and translate both shape and are shaped by the languages we use. They also emphasize an ongoing challenge for comparative legal-linguistic research: to remain attentive to context without falling into reductionism, and to embrace pluralism without fragmenting coherence.

In publishing this issue, we continue to invite interdisciplinary contributions that push the boundaries of law and language. The work presented here reminds us that the project of comparative legal-linguistic analysis is not merely academic, it is also deeply political, shaped by power, history, and, by the voices we choose to listen to.

Caterina Bergomi

On behalf of the Editorial Board

Repenser les droits linguistiques dans l'ordre international

Dr. Indira Boutier[1]

Résumé: Dans un monde où la maitrise de la langue dominante devient un prérequis implicite de l'inclusion sociale et citoyenne, les droits linguistiques demeurent relégués à la marge du droit international. Leur reconnaissance partielle, souvent subordonnée à d'autres libertés fondamentales comme la non-discrimination ou la liberté d'expression, les enferme dans un statut dérivé et résiduel, les réduisant à de simples accessoires fonctionnels du vivre-ensemble. Pourtant, parler sa langue ne relève pas d'un privilège identitaire, mais d'un droit humain fondamental : un droit à l'existence, à la mémoire, à la dignité. À travers l'analyse croisée des politiques migratoires, des jurisprudences nationales et internationales, ainsi que des dispositifs normatifs régionaux, ce travail interroge la portée réelle des garanties offertes aux communautés linguistiques. L'étude s'attache à déconstruire la hiérarchie implicite qui oppose les droits dits « universels » aux droits dits « culturels », et met en lumière les logiques d'exclusion que cette dichotomie produit. Elle défend l'idée que les droits linguistiques doivent être pensés non comme des concessions adaptatives, mais comme des piliers normatifs à part entière, indissociables de la liberté d'expression, du droit à un procès équitable ou encore de la participation politique effective. À rebours des lectures fonctionnalistes, ce papier plaide pour une réinscription de la langue dans l'architecture centrale des droits humains : non pas simplement comme un outil de communication, mais comme un vecteur de reconnaissance et de pluralité démocratique.

Mots clés : Justice linguistique, Droits humains, Exclusion par la langue.

Sommaire : 1. Introduction ; 2. L'évolution jurisprudentielle des droits linguistiques ; 3. Les dispositifs internationaux ; 4. Conclusion.

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Rethinking language rights in the international order

Abstract: In a world where mastery of the dominant language has become an implicit prerequisite for social and civic inclusion, linguistic rights remain relegated to the periphery of international law. Their partial recognition – often subordinated to other fundamental freedoms such as non-discrimination or freedom of expression – confines them to a derivative and residual status, reducing them to mere functional accessories of coexistence. Yet speaking one's language is not a matter of identity privilege, but a fundamental human right: a right to existence, to memory, to dignity. Through a cross-analysis of migration policies, national and international jurisprudence, and regional normative frameworks, this paper interrogates the actual scope of the guarantees afforded to linguistic communities. It seeks to deconstruct the implicit hierarchy that pits so-called "universal" rights against so-called "cultural" rights, and highlights the exclusionary logics this dichotomy produces. The paper argues that linguistic rights must be conceived not as adaptive concessions, but as normative pillars in their own right, inseparable from freedom of expression, the right to a fair trial, and meaningful political participation. In contrast to functionalist readings, this paper calls for the reintegration of language into the central architecture of human rights: not merely as a communicative tool, but as a vehicle of recognition and democratic plurality.

Keywords: *Linguistic justice, human rights, exclusion through language.*

1. *Introduction*

Partout dans le monde, des millions de locuteurs minoritaires se heurtent à une réalité tenace : celle d'une citoyenneté conditionnée par la langue. Accéder à l'éducation, comprendre une procédure, défendre ses droits devant un juge ou simplement s'orienter dans l'administration – autant d'actes essentiels qui deviennent inaccessibles lorsque la langue du pouvoir n'est pas celui du vécu. Dans un contexte où la maîtrise de l'idiome dominant s'impose comme une norme implicite d'inclusion, les discriminations linguistiques opèrent comme des filtres invisibles mais redoutables. Elles fragmentent l'espace social, assignent des statuts différenciés aux individus, et compromettent l'égalité en dignité et en droits.

Or le droit d'exister dans sa langue – d'apprendre, de s'exprimer, de participer à la vie publique en celle-ci – ne relève pas d'un privilège culturel ou d'un luxe identitaire. Il constitue une condition substantielle de la jouissance des droits humains. Pourtant, dans l'architecture normative actuelle, les droits linguistiques demeurent marginalisés, souvent réduits à des prolongements accessoires d'autres garanties plus classiques. Cette approche utilitariste, qui traite la langue comme un simple outil de communication ou d'adaptation sociale, invisibilise sa dimension constitutive de l'identité individuelle et collective. Elle légitime, au nom d'une neutralité administrative ou d'une unité nationale abstraite, des formes d'effacement symbolique qui affectent durablement les capacités d'agir des locuteurs minorés.

La situation des détenus étrangers en France, fréquemment privés de moyens effectifs de compréhension et d'expression en détention, en est une illustration emblématique : à travers le prisme de la langue, c'est l'accès même à la justice, à la citoyenneté et à l'égalité qui se trouve biaisé. Plus largement, la langue devient un critère de sélection dans les politiques migratoires, une performance à prouver pour espérer être intégré, plutôt qu'un droit à garantir.

À travers une approche fondée sur les droits humains, ce travail propose de replacer la langue au cœur de la réflexion juridique contemporaine. Il s'articulera en deux temps. La première partie interrogera le statut paradoxal des droits linguistiques : omniprésents dans la vie démocratique, mais marginalisés dans leur reconnaissance juridique, ils demeurent souvent subordonnés à d'autres droits, ce qui limite leur justiciabilité. Cette section analysera les effets juridiques, politiques et symboliques de cette invisibilisation, à travers les politiques d'assimilation, les logiques de filtrage migratoire et les hiérarchies linguistiques implicites. La seconde partie explorera les instruments du droit international, en identifiant dans les conventions, les jurisprudences et les pratiques institutionnelles les linéaments d'un droit linguistique autonome. En mettant en lumière les expériences régionales (Canada, Québec, Euskadi, Suisse, Finlande), l'objectif sera de démontrer que la reconnaissance juridique de la diversité linguistique ne constitue pas une menace pour l'ordre démocratique, mais l'une de ses conditions d'effectivité.

2. *L'évolution jurisprudentielle des droits linguistiques*

La question des droits linguistiques occupe une place paradoxale dans le paysage juridique contemporain. Bien que la langue constitue un vecteur essentiel d'expression identitaire et un outil indispensable d'accès aux droits fondamentaux, elle demeure fréquemment reléguée au statut de droit dérivé. Cette subordination conceptuelle et juridique engendre un vide significatif dans la protection des droits humains, particulièrement pour les communautés linguistiques minoritaires, en limitant leur accès effectif à la justice, à l'éducation ou encore aux services publics. Comme le souligne Fernand de Varennes, ancien Rapporteur Spécial sur les questions relatives aux minorités, cette conception erronée repose sur une fausse dichotomie entre les droits dits « fondamentaux » et ceux qualifiés de « collectifs » ou de « troisième génération ». Or, la majorité des droits linguistiques ne sont pas des droits marginaux ou collectifs : ils dérivent en réalité directement des droits fondamentaux individuels, tels que la liberté d'expression, le droit à la vie privée, le principe de non-discrimination ou encore le droit de participer à

la vie culturelle[2]. Ainsi, le droit d'utiliser sa langue dans la sphère privée, de porter un nom dans sa propre langue, ou d'échanger librement dans sa langue avec les membres de sa communauté, semble relever du droit à la vie privée et de la liberté d'expression[3]. Cette analyse, renverse la hiérarchie implicite entre droits. Les soi-disant « droit linguistiques » ne sont pas un ajout secondaire au corpus juridique, mais une application directe et concrète des principes universels de dignité humaine et d'égalité[4]. Leur invisibilisation semble donc résulter d'une lecture étroite des textes juridiques et d'un manque de volonté politique, et non d'un défaut de fondement normatif. En outre, la reconnaissance des droits linguistiques uniquement sous l'angle des « minorités nationales » crée une exclusion injustifiée de nombreux locuteurs, notamment les migrants ou les populations non reconnues comme minorité historiques. Cette exclusion se manifeste avec acuité dans les politiques migratoires contemporaines, où la langue devient moins un vecteur d'intégration qu'un outil de sélection préalable.

La question de la prise en compte des langues dans les politiques publiques ne saurait être dissociée des rapports de pouvoir qui sous-tendent la définition même de ce qui est reconnu comme relevant de l'ordre légitime du langage. Loin de constituer un simple vecteur de communication, la langue opère comme un dispositif de sélection préalable, particulièrement visible dans les contextes migratoires où elle devient un critère implicite d'appartenance nationale. Dès lors, on peut s'interroger : à partir de quel moment le non-usage d'une langue par une partie de la population est-il susceptible d'avoir un effet normatif, notamment dans les pratiques administratives, telles que la rédaction des actes officiels ? Cette question révèle que la langue, comme d'autres marqueurs de différenciation sociale, ne peut être pensée hors de son inscription dans un champ politique. Dans certaines propositions contemporaines, telles que celles portées par des figures politiques comme Marine Le Pen appelant à l'usage exclusif du français dans la communication publique, la langue se voit assignée une fonction de frontière, à la fois symbolique et juridique, entre un intérieur national « légitime » et des altérités perçues comme menaçantes[5]. Cette sacralisation du français comme langue « irremplaçable » participe d'une stratégie de nationalisation du langage, où l'usage des langues dites étrangères devient suspect, voire interdit, sauf exception. Il ne s'agit donc pas simplement d'un choix de politique linguistique, mais bien d'un geste de hiérarchisation des appartenances. Ce déplacement du langage vers une fonction de tri social illustre combien les revendications linguistiques excèdent les débats techniques ou juridiques : elles engagent des conceptions concurrentes de la citoyenneté, de la reconnaissance et de la participation. À travers la langue, c'est bien l'architecture d'une communauté politique qui se dessine, incluant certains locuteurs tout en en excluant d'autres, souvent les plus vulnérables.

Ce processus trouve une expression particulièrement aiguë dans les politiques migratoires contemporaines, où l'exigence croissante de maîtrise linguistique, désormais intégrée aux procédures de séjour, de regroupement familial ou de naturalisation, « ne vise pas à intégrer, mais à trier » les candidats à l'installation, selon une logique sélective davantage fondée sur la conformité culturelle que sur le respect des droits fondamentaux[6]. Le droit de connaître la langue du pays d'accueil se voit ainsi converti en injonction normative, dont la non-conformité justifie l'exclusion. Derrière l'apparente neutralité linguistique se cache ainsi un mécanisme d'écrémage social, où la langue devient un filtre d'accès à la communauté politique, renforçant les hiérarchies entre locuteurs légitimes et non légitimes[7]. Les femmes et les personnes faiblement scolarisées sont particulièrement pénalisées par cette logique, en raison d'obstacles structurels à l'apprentissage linguistique. Dès lors, la langue cesse d'être un droit à garantir, pour devenir une performance à prouver – réversible, mesurable et potentiellement disqualifiante. Pourtant, les droits fondés sur la liberté d'expression ou la non-discrimination s'appliquent à tous les individus, indépendamment de leur appartenance à une minorité officielle.

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[2] F. de VARENNES, *Language Rights as an Integral Part of Human Rights*, in *Lesser used languages and the law in europe,* 15, 2001, p.16.
[3] RECOMMANDATIONS D'OSLO CONCERNANT LES DROITS LINGUISTIQUES DES MINORITES NATIONALES, 1998, para. 14.
[4] M. DOUCET, M. BASTARACHE, M. RIOUX, *Les Droits Linguistiques: Fondements et Interprétation*, 13, 2013.
[5] Marine Le Pen favorable à un usage exclusif du français dans la communication et la publicité, LE MONDE (15 Février 2022).
[6] D. LOCHAK, *Intégrer Ou Exclure Par La Langue ?*, *Plein droit*, 98, 3, 2013.
[7] *Id.*, p. 4.

Un autre enjeu majeur réside dans le fait que les principaux traités européens protégeant les langues (comme la Charte européenne des langues régionales ou minoritaires) ne prévoient aucun recours individuel en cas de violation des droits. Cette lacune institutionnelle affaiblit la justiciabilité des droits linguistiques et contraste avec d'autres instruments de protection des droits fondamentaux, tels que la Convention européenne des droits de l'homme ou encore le Pacte international relatif aux droits civils et politiques. D'où l'intérêt, selon De Varennes, de reconnecter les droits linguistiques aux mécanismes classiques des droits humains : ce repositionnement permettrait d'invoquer la liberté d'expression ou la non-discrimination devant les juridictions compétentes, et non de dépendre uniquement des mécanismes de suivi non-contraignant[8]. Enfin, la non-reconnaissance des droits linguistiques comme droits fondamentaux mine le principe de dignité. La langue, entant que composante essentielle de l'identité personnelle, ne peut être réduite à un simple outil fonctionnel. L'imposition d'une langue dominante dans la sphère publique – sans reconnaissance ni aménagement – revient à une négation symbolique et pratique de l'identité linguistique des locuteurs. Cette négation ne se limite pas à l'exclusion formelle d'un idiome, mais opère un effacement de la mémoire collective, une mise en silence de mondes vécus. La langue est à la fois mémoire et horizon, elle structure les représentations, les affects ou encore les récits fondateurs d'un groupe[9]. L'éradication linguistique ne procède pas alors d'une neutralité bureaucratique, mais d'une logique de domination symbolique, dans laquelle la langue majoritaire devient l'étalon unique de la citoyenneté légitime. Cette hiérarchisation linguistique produit une forme d'insécurité ontologique chez les locuteurs minorés, qui se voient contraints de renier leur langue pour s'insérer dans l'espace institutionnel. Le pouvoir d'Etat, loin de se borner à organiser la communication, devient ici le gestionnaire des appartenances, définissant qui peut être entendu, et dans quelle langue. La langue ne sert plus seulement à dire, elle décide de qui peut dire. Elle décide la visibilité, l'invisibilité, la dignité. Refuser cette reconnaissance revient à assigner certaines populations à un statut d'infra-appartenance, à une condition d'opacité citoyenne. Finalement, l'unification linguistique décrétée dans l'intérêt de la cohésion nationale reproduit un paradoxe majeur : ce que l'on prétend rassembler, on l'éteint. À travers la normalisation des voix, on les rend interchangeables, et de ce fait remplaçable. L'idéal démocratique ne saurait reposer sur une homogénéisation des voix, mais sur la reconnaissance du droit à parler depuis sa propre langue et dans sa propre langue. Autrement dit, à être reconnu comme sujet de parole légitime, y compris dans la dissonance linguistique.

Ainsi, l'approche actuelle traite souvent les droits linguistiques comme accessoires à d'autres libertés fondamentales, sans reconnaître leur valeur intrinsèque en tant que droits autonomes. En pratique, cela signifie qu'au lieu de reconnaître cette valeur comme un élément constitutif de l'identité humaine et sociale, le système juridique actuel la considère comme un outil permettant l'exercice d'autre droit. L'arrêt *R. c. Beaulac* de la Cour Suprême du Canada (1999) illustre parfaitement cette problématique[10]. En l'espèce, Jean Victor Beaulac, un francophone accusé de meurtre en Colombie-Britannique, s'est vu initialement refuser le droit à un procès dans sa langue 'officielle' (le français) au motif que ses compétences en anglais étaient « adéquates mais pas parfaite ». Or, l'article 530 du code criminel canadien reconnaît explicitement le droit de tout accusé à être jugé dans la langue officielle de son choix – anglais ou français –, dès lors qu'il en fait la demande au moment prescrit. Cette première interprétation minimaliste démontrait une vision purement instrumentale du droit linguistique, subordonnée à une logique d'efficience procédurale. La Cour Suprême canadienne, notamment le Juge Bastarache, a corrigé cette approche en insistant sur le caractère fondamental et substantiel du droit linguistique garanti par l'article 530 du code criminel. Refuser ce droit sur la base d'une convenance administrative ou d'une prétendue équité procédurale est contraire à la justice, car « c'est le rejet de la demande qui constitue l'exception et qui doit être justifié »[11]. De plus, il est précisé que les droits linguistiques ont une origine et une finalité distinctes des principes de justice fondamentale, ce qui renforce leur autonomie et leur valeur propre dans l'architecture des droits de la personne[12]. Ainsi, la Cour suprême a rappelé que la capacité de communiquer dans une langue seconde n'annule pas le droit

[8] F. de VARENNES, *supra* note 2, p. 24.
[9] A. AREZKI, *L'identité Linguistique : Une Construction Sociale et/Ou Un Processus de Construction Socio-Discursive ?*, dans *Synergies Algérie*, 2, 2008, p. 194.
[10] R. c. Beaulac, (Cour Suprême du Canada 1999).
[11] *Id.*, p. 801.
[12] *Id.*, p. 770.

fondamental d'un individu à accéder à la justice dans la langue de son choix, car « la langue de l'accusé est une partie importante de son identité culturelle »[13]. Cet arrêt marque une rupture claire avec l'approche restrictive adoptée dans l'affaire *Société des Acadiens*. Dans cette décision de 1986, la Cour Suprême du Canada avait donné une interprétation étroite des droits linguistiques, les considérant principalement comme le produit de compromis politiques, sans leur accorder le même statut que les droits fondamentaux garantis par la Charte[14]. Les juges majoritaires avaient même soutenu que ces droits n'impliquaient pas nécessairement le droit d'être compris par le juge, les dissociant ainsi des garanties procédurales telles que celles contenues à l'article 7. En revanche, l'arrêt *Beaulac* propose une vision profondément renouvelée : la Cour y affirme que les droits linguistiques doivent être interprétés de façon large, généreuse et téléologique, car ils participent directement à la dignité et à l'identité d'autres droits, mais des droits autonomes, porteurs d'une valeur en eux-mêmes, qui ne peuvent être subordonnés à des considérations d'ordre pratique comme l'efficacité judiciaire. Ce changement d'orientation dans les années 90 au Canada illustre une évolution majeure vers la reconnaissance de la langue comme un droit humain fondamental, et non plus comme une simple modalité procédure. Cette évolution jurisprudentielle s'inscrit dans un contexte constitutionnel bien précis, dans lequel, comme l'observe la Cour, « la loi constitutionnelle de 1867, qui énonce les règles relatives au fédéralisme canadien, ne confère à aucun ordre de gouvernement la compétence exclusive de créer des droits linguistiques »[15]. En réhabilitant la langue comme vecteur d'humanité – liés à la dignité humaine et à l'identité individuelle – la Cour opère un renversement qui ouvre la voie à une lecture plus inclusive des rapports entre culture, droit et reconnaissance institutionnelle. Ce geste doctrinal, bien qu'inscrit dans un cadre national, participe d'une dynamique globale de réaffirmation de ce droit.

Cependant, la subordination conceptuelle des droits linguistiques à d'autres garantis fondamentales trouve une illustration particulièrement parlante dans deux champs juridiques centraux : la liberté d'expression et le droit à un procès équitable. Si la première est généralement reconnue comme pilier des régimes démocratiques, le droit de choisir la langue dans laquelle on s'exprime demeure, lui, largement négligé, comme le démontre l'affaire *R. c. Beaulac* (1999)[16]. De même, la possibilité d'obtenir un service d'interprétation dans un cadre juridique relève encore d'une logique d'accessibilité procédurale, conçue comme un simple aménagement technique, et non comme la reconnaissance d'un droit fondamental à l'usage de la langue maternelle dans les interactions avec les institutions. Cette approche utilitaire a des effets concrets, souvent délétères, sur les communautés linguistiques minorés. En l'absence d'une protection explicite du droit à utiliser et à développer sa propre langue, des politiques d'assimilation linguistiques ont pu prospérer, contribuant à l'effacement progressif de certains patrimoines linguistiques. La Déclaration universelle des droits linguistiques, adoptée à Barcelone en 1996 avec le soutien de l'UNESCO, identifie clairement cette menace plurielle : insuffisante autonomie politique, isolement démographique, absence de codification linguistique ou encore conflit avec un modèle culturel dominant[17]. Ces facteurs fragilisent profondément l'existence même de nombreuses communautés, parmi lesquelles les Basques, les Catalans, les Gallois ou encore les Acadiens. Face à ces constats, plusieurs instruments normatifs ont tenté de poser les bases d'un véritable droit linguistique. La Déclaration de Barcelone, bien qu'elle ne soit pas contraignante, constitue à cet égard un jalon essentiel. Elle formalise l'idée selon laquelle toute communauté linguistique détient le droit de vivre sa langue, de la transmettre, et d'accéder aux institutions dans celle-ci. Elle ne formule pas seulement des principes symboliques : elle propose un cadre articulé qui peut inspirer des dispositifs juridiques nationaux sensible à la justice linguistique. Toutefois, sa portée reste limitée à des initiatives locales ou à des engagements d'Etats déjà favorables à la diversité linguistique.

Sur le plan multilatéral, l'Organisation des Nations Unies valorise en théorie le multilinguisme comme levier de dialogue interculturel et de participation institutionnelle. Présenté comme un vecteur de tolérance, de dialogue interculturel et de participation égalitaire entre les Etats membres, ce principe s'incarne dans la reconnaissance de six langues officielles : l'anglais, l'arabe, le chinois, l'espagnol, le

[13] *Id.*, p. 771.
[14] Société des Acadiens c. Association of Parents, (Cour Suprême du Canada 1986).
[15] R. c. Beaulac, *supra* note 9, p. 784.
[16] R. c. Beaulac, *supra* note 9.
[17] Déclaration universelle des droits linguistiques, (1996).

français et le russe. Si l'égalité théorique entre ces langues est revendiquée, la pratique administrative consacre une hiérarchie implicite : seulement l'anglais et le français sont langues de travail du Secrétariat. En 2019, plusieurs États hispanophones ont dénoncé cette asymétrie, soulignant que seuls 32 % des contenus produits étaient disponibles en espagnol, malgré le fait qu'il s'agisse de la deuxième langue la plus parlée au monde[18].

Cette sélection, bien que symboliquement inclusive, traduit aussi une hiérarchie implicite entre idiomes, fondée sur des considérations politiques, diplomatiques et économiques. Cette hiérarchie trouve ses racines dans un paradigme hérité des constructions nationales du XIXe siècle : celui du modèle « une nation, une langue »[19]. Historiquement promu comme instrument d'unification interne, ce modèle continue de structurer, de manière plus diffuse, les régimes linguistiques internationaux. Issus des processus de consolidation étatique en Europe, il s'est développé dans le sillage de la formation des Etats-nationaux, où la langue fut instrumentalisée pour assurer la cohésion sociale et justifier l'autorité politique. En France comme en Allemagne, elle devint un outil de légitimation étatique et d'effacement des pluralités internes. Cette conception repose sur une vision idéalisée de la société, homogène sur les plans ethnique, religieux et linguistique[20]. Derrière l'idéal d'universalité, ce projet portait en réalité un potentiel homogénéisateur, qui s'est exporté, souvent par la contrainte, dans les mondes colonisés et postcoloniaux. En Inde, cette tension reste particulièrement visible : la promotion récurrente de l'hindi comme langue officielle unique, souvent perçue comme une forme d'impérialisme linguistique, entre en collision avec la reconnaissance constitutionnelle de 22 langues (Huitième annexe à la Constitution de l'Inde) et de centaines de dialectes. La langue devient alors un champ de luttes, entre projet d'unité étatique et affirmation d'identités linguistiques multiples. Ce déplacement du modèle national vers l'espace international n'est ainsi pas neutre : il opère une transposition des logiques d'exclusion symbolique à l'échelle multilatérale. À l'ONU, cette logique perdure sous une forme transformée, cristallisant des rapports de force historiques dans la sélection des langues reconnues comme vecteurs de communication globale. L'admission de l'arabe en 1973, première langue ajoutée après l'adoption de la Charte, illustre les logiques sous-jacentes à ces choix. Elle fut motivée par une nécessité fonctionnelle que par le poids géopolitique croissante des pays arabes à l'issue de la guerre de Kippour ou dans un contexte de tensions énergétiques mondiales[21]. Ce précédent a révélé les tensions entre l'aspiration universaliste de l'institution et les critères de sélection des langues, soulevant des inquiétudes quant à l'exclusion structurelle de nombreuses autres communautés linguistiques.

À cela s'ajoute des contraintes matérielles : la gestion multilingue implique des dispositifs lourds de traduction et d'interprétation, dont le coût limite *de facto* toute extension à des langues moins dotées institutionnellement[22]. Par ailleurs, la coexistence de plusieurs versions linguistiques, toutes également authentiques, fragilise l'uniformité interprétative des textes normatifs comme le prévoit l'article 33 paragraphe 1 de la Convention de Vienne sur le droit des traités[23]. Le multilinguisme onusien fonctionne davantage comme une vitrine diplomatique que comme un levier effectif de justice linguistique. Il reflète les rapports de pouvoir qui structurent l'ordre international, sans offrir de mécanismes concrets de reconnaissance ou de protection aux langues minoritaires ou non souveraines. Dans ce cadre, la diversité linguistique est tolérée dans ses expressions dominantes, mais demeure invisibilisée dans ses formes les plus fragiles. De plus, la création de journées consacrées au portugais (2020) et au swahili (2022) pourrait être interprétée comme un signe d'ouverture, une tentative, timide, de reconnaître la pluralité des répertoires linguistiques au-delà du cercle restreint des langues officielles. Pourtant cette apparente inflexion masque des contraintes structurelles durables qui limitent en pratique toute véritable évolution du régime linguistique onusien. D'abord, les dimensions logistiques constituent un frein majeur : la

[18] Multilingualism, UNITED NATIONS - CEB, https://unsceb.org/multilingualism-public (last visited Apr 1, 2025).
[19] G. GUPTA, *The Debate on "One Nation, One Language,"* dans *International Journal of Language & Law*, 11, 2022.
[20] K. REZAKHANLOU, *Language & Nationalism: One Nation, One Language?*, dans *Babel Young Writers' Competition*, 10, 2018.
[21] M. TABORY, *The Addition of Arabic as an Official and Working Language of the UN General Assembly and at Diplomatic Conferences*, dans *Israel Law Review*, 13, 1978, p. 408.
[22] *Id.*, pp. 396–397.
[23] *Id.*, p. 407.

traduction et l'interprétation simultanées dans les six langues actuellement reconnues absorbent à elles seules environ 15% du budget ordinaire de l'organisation. Dans ce contexte, l'élargissement à d'autres langues – en particulier celles qui ne bénéficient pas d'une infrastructure institutionnelle comparable – est perçu comme un coût, plus que comme une exigence démocratique. À ces contraintes budgétaires s'ajoutent des résistances d'ordre politique. L'hypothèse d'un élargissement du cercle linguistique est souvent perçue par certains États membres, historiquement dominants, comme une menace potentielle à leur capital symbolique et à leur capacité d'influence. La langue, loin d'être un simple vecteur de communication, y apparaît comme un instrument stratégique de pouvoir – sa démocratisation risquant de redistribuer les conditions d'accès à la parole institutionnelle. Enfin, les critères qui président à l'intégration d'une langue dans les dispositifs onusiens demeurent flous, voire arbitraires. Doit-on privilégier le critère démographique – comme dans le cas de l'hindi ou de l'ourdou –, l'importance géopolitique, comme cela pourrait être le cas du portugais, ou la charge symbolique associée à certaines langues régionales, à l'image du swahili, lingua franca africaine au rayonnement transnational ? L'absence de critères stabilisés révèle une tension persistante entre les idéaux universalistes proclamés par l'organisation et la réalité des rapports de force qui en façonnent la configuration linguistique. Cette indétermination témoigne surtout d'un vide normatif, où la reconnaissance linguistique ne relève ni d'un droit codifié ni d'une obligation institutionnelle, mais d'un compromis précaire entre diplomatie, pragmatisme budgétaire et géopolitique de la parole.

Ainsi, la langue ne saurait être réduite à un système de signes neutre ou un instrument de communication formelle : elle constitue un vecteur structurant d'appartenance, un marqueur de distinction sociale, et un espace de mémoire partagée. Refuser à une langue sa place dans la sphère publique revient à invisibiliser les récits, les repères et les codes qui fondent l'identité des groupes et leur légitimé à exister collectivement. Comme le démontre Bourdieu, la langue est un capital symbolique inégalement distribué, traversé de rapports de domination[24]. Dans cette perspective, la langue dominante n'est jamais neutre : elle est le produit d'un rapport de force historique, devenu invisible parce que naturalisé. Dès lors, parler « autrement » revient souvent à se placer en position de disqualification. L'exemple des cités françaises depuis les années 1980 est éclairant : les formes langagières issues de ces espaces sont fréquemment stigmatisées, indexées comme inadaptées, voire menaçantes, contribuant ainsi à essentialiser des groupes sociaux déjà marginalisés[25]. La langue y devient outil de surveillance et de tri, bien plus que de communication. Parler, c'est dès lors exister dans l'espace social mais également inscrire sa propre culture dans le tissu symbolique du monde commun. Le langage devient un site de lutte pour la reconnaissance. Cette lutte est d'autant plus aiguë lorsqu'elle concerne des langues minorées, reléguées ou exclues, réduites à l'informel ou à la sphère privée. La diminution de la proportion de Québécois s'exprimant en français à la maison ne saurait ainsi être lue comme une donnée statistique isolée : elle engage une transformation profonde des conditions d'existence symbolique d'un collectif. Comme l'exprime une formule saisissante : « Un Québec qui n'est pas à l'aise dans ses mots empruntera ceux de son voisin pour s'en faire un manteau »[26]. Cette image, d'apparence poétique, révèle en réalité une dynamique de dépossession : celle où la langue perd sa capacité à soutenir une identité propre, au profit d'un vêtement emprunté, c'est-à-dire d'un cadre symbolique exogène. Ce glissement linguistique opère comme une redéfinition silencieuse des contours de l'appartenance, et interroge la possibilité même d'une continuité culturelle lorsqu'elle n'est plus médiatisée par les mots du groupe lui-même. Dans cette perspective, la perte linguistique devient aussi perte de souveraineté narrative. Ce constat appelle une lecture juridique située. Depuis l'adoption de la Charte de la langue française (Loi 101) en 1977, le Québec a inscrit dans le droit provincial le principe du français comme langue officielle, affirmant ainsi une volonté de résistance normative à la logique d'assimilation. Ce cadre légal engage les institutions dans des politiques de francisation, d'encadrement linguistique de l'éducation, de l'affichage et de la fonction publique. Pourtant, si cette reconnaissance constitue une avancée en matière de protection linguistique, elle reste tributaire de tensions constantes, notamment face à l'influence

[24] J. DUBOIS, P. DURAND & Y. WINKIN, *Aspects Du Symbolique Dans La Sociologie de Pierre Bourdieu*, dans *CONTEXTES,* 2013.
[25] G. CONSTANTINOU, *Le Langage Des Jeunes : Moteur de Discrimination Ou Marque d'identité ?,* dans *Dialogos,* XXIII, 2022.
[26] D. GAGNE, *La langue est notre manière d'habiter le monde*, dans *Le Devoir*, Aout 2023, https://www.ledevoir.com/opinion/idees/796770/idees-la-langue-est-notre-maniere-d-habiter-le-monde.

croissante de l'anglais dans l'espace économique, numérique et universitaire. Un autre exemple met en lumière le succès de la mise en cadre d'un cadre légal. C'est notamment le cas de la Communauté autonome basque d'Euskadi, où la langue basque bénéfice d'un statut de co-officialité inscrit dans le droit régional à l'article 6 du statut de gernika (« l'euskera, langue propre du Pays Basque aura, comme le castillan, le caractère de langue officielle en Euskadi »)[27]. Ce modèle de co-gestion linguistique est fondé sur une répartition des compétences entre l'Etat central et la région et incarne une reconnaissance juridique de la diversité linguistique comme un élément constitutif du vivre-ensemble démocratique. Ainsi, loin d'une simple reconnaissance symbolique, ce statut engage les pouvoirs publics dans une politique active de normalisation linguistique : obligation de bilinguisme dans l'administration, développement de l'enseignement en langue basque, exigences linguistiques dans la fonction publique et soutien explicite aux médias bascophones[28]. Ces mesures visent à garantir l'usage de la langue dans la sphère publique, sa vitalité et sa transmission intergénérationnelle. Ainsi, la diversité linguistique n'est plus simplement tolérée, mais juridiquement organisée et politiquement soutenue.

Ces différents exemples montrent que la reconnaissance linguistique excède largement le registre symbolique ou patrimonial : elle participe d'un travail normatif sur les conditions de légitimité dans l'espace public. Elle engage le droit dans une fonction structurante, en tant qu'instrument de hiérarchisation ou, à l'inverse, de redistribution des régimes de visibilité. Pourtant, une dimension semble rester en retrait dans les débats contemporains : celle de la durabilité. Autrement dit, si l'on considère que les droits linguistiques ne peuvent se penser hors d'un horizon temporel, celui de la transmission, de la reproduction des usages, et de la capacité à se projeter collectivement, alors un paramètre mérite attention. Il s'agit de ce que l'on pourrait nommer une forme de densité territoriale : la présence significative d'un groupe linguistique dans un espace donné, qui fonde traditionnellement les revendications en matière de plurilinguisme administratif ou de co-officialité. Ce critère, loin d'être obsolète, demeure central dans la fabrique des normes, en ce qu'il articule reconnaissance symbolique et inscription concrète dans les dispositifs institutionnels. Il affirme que la langue n'est pas seulement une modalité d'expression culturelle, mais un mode d'existence politique, une manière d'habiter la cité et d'y être reconnu comme sujet collectif.

Derrière ces initiatives, au Québec et dans la Communauté autonome basque d'Euskadi, se dessinent des justifications théoriques et pratiques à une reconnaissance pleine des droits linguistiques en tant que droits fondamentaux autonomes. Il ne s'agit pas seulement d'affirmer une égalité d'accès aux institutions, mais de reconnaître que la langue structure l'appartenance, la filiation historique, la transmission culturelle[29]. Elle n'est pas un simple code : elle est le reflet d'un ordre symbolique situé, un miroir identitaire. C'est dans les manières de dire, de nommer, d'argumenter que se transmettent les mondes sociaux. Réduire les droits linguistiques à une variable procédurale, c'est donc nier leur charge politique. À ce titre, la diversité langagière ne peut être pensée comme un enjeu secondaire de gestion : elle doit être reconnue comme l'un des visages de la démocratie culturelle. Refuser cette reconnaissance, c'est organiser un effacement[30]. Laisser place à une pluralité linguistique juridiquement encadrée, c'est, au contraire, affirmer que chaque langue porte une façon d'être-au-monde, et qu'aucune démocratie ne peut être complète si elle ne garantit pas à chacun la possibilité de dire le monde dans sa propre langue.

Enfin, les développements doctrinaux relatifs aux « notions autonomes » dans le cadre de la Convention Européenne des droits de l'homme offrent une piste féconde. En affirmant la capacité du juge européen à construire des définitions propres des notions conventionnelles – indépendamment des cadres nationaux –, cette méthode pourrait ouvrir la voie à une conceptualisation autonome des droits linguistiques[31]. Cela permettrait de dépasser les interprétations minimalistes souvent dominantes au

[27] Loi organique 3/1979 du 10 décembre 1979 portant Statut d'Autonomie de la Communauté Autonome d'Euskadi, Boletín oficial del Consejo General del País Vasco, p. 6 (1980).
[28] E. Z. APAOLAZA, *Le Statut Juridique de La Langue Basque Dans La Communauté Autonome Basque*, dans *Cahiers internationaux de sociolinguistique*, 11, 1, 2017.
[29] P. CHARAUDEAU, *Langue, Discours et Identité Culturelle*, dans *Éla. Études de linguistique appliquée*, 2001, p. 343.
[30] *Id.*, p. 348.
[31] M. MALBLANC, *La Technique Des Notions Autonomes En Droit de La Convention Européenne Des Droits de l'Homme*, 28 Novembre 2019.

niveau étatique, et d'inscrire plus ferment la reconnaissance des langues dans l'ordre international des droits humains.

3. Les dispositifs internationaux

L'encadrement juridique des droits linguistiques en droit international repose aujourd'hui sur un ensemble d'instruments fragmentaires qui abordent la question linguistique principalement comme un corollaire d'autres droits. Plutôt que de reconnaître la langue comme objet de droit en soi, ces textes l'envisagent souvent comme une catégorie accessoire, insérée dans des dispositifs plus larges de non-discrimination ou de protection des minorités.

Le principe de non-discrimination constitue l'un des fondements les plus fréquemment mobilisés à ce sujet. Le Pacte international relatif aux droits civils et politiques, la Déclaration Universelle des droits de l'homme (article 2), et la Convention européenne des droits de l'homme (article 14) interdisent explicitement toute discrimination fondée sur la langue. Cette approche négative, qui interdit le traitement défavorable, reste toutefois limitée : elle garantit une protection minimale, sans conférer de droits positifs quant à l'usage actif de sa langue dans les sphères publiques ou institutionnelles. Cette approche restrictive se heurte à plusieurs limites structurelles. L'examen de la jurisprudence du Comité des droits de l'homme et de la Cour Européenne des Droits de l'Homme révèle que les protections fondées sur le principe de non-discrimination demeurent largement insuffisantes pour garantir une véritable équité linguistique[32]. Dans les litiges relatifs à l'accès à l'éducation ou aux services publics, les juridictions internationales ont tendance à privilégier des critères de faisabilité administrative – nombre de locuteurs concernés, coût des aménagements requis – au détriment d'une reconnaissance substantielle du droit à la langue. Ce traitement révèle une logique assimilationniste implicite : les langues minoritaires sont tolérées dans la mesure où elles facilitent l'accès à l'ordre dominant, mais rarement reconnues comme des vecteurs identitaires dignes d'une protection durable[33]. En filigrane se dessine une approche instrumentale du langage : la langue est perçue comme une incapacité temporaire à surmonter, plutôt que comme un attribut constitutif de la personne et de la communauté. Cette perspective exclut toute reconfiguration inclusive des institutions au profit des minorités linguistiques, et repose sur une logique d'intégration minimale. A terme, le langage des droits humains appliqués aux droits linguistiques échoue à saisir la dimension politique du conflit – celui d'une redistribution du pouvoir symbolique et matériel autour des langues – en préférant des solutions neutralisées et juridiquement inoffensives.

La reconnaissance de la diversité linguistique trouve un prolongement dans le domaine des droits culturels des minorités. L'article 27 du Pacte international relatif aux droits civils et politiques établit que les personnes appartenant à des minorités linguistiques ne peuvent se voir refuser le droit d'utiliser leur langue. Toutefois, cette disposition s'inscrit dans une logique de non-interférence : elle impose aux Etats une obligation d'abstention, mais ne crée pas de droits opposables à l'accès aux services publics ou à l'éducation dans la langue concernée. La Déclaration des Nations Unies sur les Droits des Minorités (1992) adopte une posture plus proactive, en appelant les Etats à protéger l'identité des minorités, y compris leur langue. Néanmoins, cette reconnaissance demeure conditionnée à des formulations souples (« dans la mesure du possible »), ce qui réduit la portée effective de ces droits. Des instruments régionaux reprennent cette logique : la Convention-cadre pour la protection des minorités nationales du Conseil de l'Europe (1995) affirme le droit d'utiliser sa langue en privé comme en public et appelle les États à promouvoir les possibilités d'utilisation de ces langues (par exemple, dans l'éducation ou la signalétique), « dans la mesure du possible » et sans imposer de charges disproportionnées[34]. Ces approches considèrent la langue comme une composante de l'identité culturelle, un droit collectif exercé par les individus au sein d'un groupe.

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[32] M. PAZ, *The Failed Promise of Language Rights: A Critique of the International Language Rights Regime*, dans *Harvard International Law Journal*, 54, 2013.
[33] *Id.*, p. 164.
[34] Convention-cadre pour la protection des minorités nationales du Conseil de l'Europe, Articles 9; 10; 14 (1995).

La liberté d'expression, autre pilier du droit international, entretient également une relation ambivalente avec la question linguistique. Si le choix de la langue constitue un aspect fondamental de l'expression individuelle, aucun traité international ne reconnaît explicitement le droit de s'exprimer dans la langue de son choix. La jurisprudence du Comité des Droits de l'Homme, notamment dans l'affaire *Ballantyne c. Canada* (1993), a admis que des restrictions à l'usage d'une langue dans des espaces d'expression privée peuvent constituer une atteinte à la liberté d'expression[35]. Le Comité a explicitement rejeté l'idée selon laquelle l'affichage commercial ne relèverait pas du champ d'application de l'article 19 du Pacte, affirmant que la liberté d'expression s'étend également aux formes commerciales de communication. Il a ainsi considéré que l'interdiction imposée par la loi 178 du Québec, qui limitait l'usage de l'anglais dans l'affichage extérieur, violait l'article 19(2) du Pacte sur la liberté d'expression, dans la mesure où elle n'était ni nécessaire ni proportionnée à un objectif légitime tel que la protection de l'ordre public ou des droits d'autrui. Le Comité a souligné que l'adoption d'un affichage bilingue aurait pu représenter une alternative moins restrictive, démontrant ainsi qu'une mesure de protection linguistique peut coexister avec la reconnaissance du droit d'exprimer une identité linguistique minoritaire. Toutefois, cette reconnaissance reste indirecte : la protection découle du droit général à s'exprimer, sans établir une autonomie du droit linguistique comme tel. Cette approche transforme la langue en un accessoire de la liberté d'expression, sans valeur obligatoire[36]. De plus, malgré la reconnaissance par les juridictions internationales de l'importance de la liberté d'expression, des restrictions linguistiques sont fréquemment admise lorsque celles-ci sont justifiées par des considérations d'ordre public ou d'unité nationale. La Cour européenne des droits de l'homme a ainsi validé des lois imposant l'usage exclusif d'une langue officielle dans les relations administratives, en estimant que de telles mesures relèvent d'un choix légitime de politique linguistique. Dans plusieurs affaires, telles *Mentzen alias Mencena c. Latvia* (2004), la Cour a jugé qu'exiger l'usage de la langue officielle sur des documents d'identité ou dans les communications avec les institutions ne constituait pas une atteinte disproportionnée à la liberté d'expression ou au respect de la vie privée[37]. De plus, la Cour a admis que la transcription phonétique et l'ajout de terminaisons grammaticales aux noms étrangers relevaient d'une « nécessité sociale impérieuse », visant à garantir la cohérence grammaticale du letton et à préserver la langue officielle dans la sphère publique[38]. Bien que la Cour reconnaisse l'existence d'une ingérence dans la vie privée de la requérante, notamment du fait des difficultés d'identification dans ses interactions sociales et professionnelles, les juges de la Cour de Strasbourg estiment que cette interférence est justifiée par l'importance symbolique et structurelle de la langue nationale dans la formation d'un Etat démocratique. Celle décision illustre une lecture institutionnelle de la langue, où la protection du système linguistique national prime sur les droits individuels à la préservation de l'identité personnelle, notamment en matière d'orthographe des noms. En avalisant cette conception, la Cour entérine une logique d'homogénéisation étatique plutôt qu'une reconnaissance de la pluralité linguistique comme valeur constitutive de l'ordre démocratique. Finalement, ce raisonnement repose sur une logique de neutralisation du fait linguistique : la langue y est envisagée comme un outil de communication administratif, déconnecté de sa portée identitaire et culturelle. L'argument d'efficience étatique – garantir une communication uniforme dans l'espace public – tend à primer sur les revendications d'expression individuelle en langue minoritaire. Cette orientation jurisprudentielle s'enracine dans une conception fonctionnelle du langage, déjà affirmé dans l'affaire « *Inhabitants of Leeuw-St-Pierre v. Belgium* » (1965)[39]. Saisie d'une requête par des francophones réclamant la réception de documents administratifs dans leur langue, la Commission européenne des droits de l'homme a conclu à l'absence de violation de la Convention, considérant que l'usage d'une langue dans les échanges avec l'administration ne relève pas d'un droit culturel protégé, mais d'une modalité organisationnelle relevant de la sphère étatique. La Commission a ainsi affirmé qu'aucun « droit d'utiliser la langue de son choix … dans les relations avec les autorités » ne peut être déduit des textes conventionnels. Ce raisonnement consacre une logique institutionnelle d'unification linguistique,

[35] Ballantyne et al. c. Canada, (Comité des droits de l'homme 1993).
[36] G. LEVESQUE, *Droit international et protection des droits linguistiques*, L-express.CA (4 septembre 2012), https://l-express.ca/droit-international-et-protection-des-droits-linguistiques/.
[37] Mentzen c. Latvia (dec.), (Cour européenne des droits de l'homme 2004).
[38] *Id.*, para. 4(1).
[39] Inhabitants of Leeuw-St. Pierre v. Belgium, (European Commission of Human Rights 1965).

où la stabilité administrative prévaut sur la reconnaissance des pratiques langagières plurielles. Dans ce sens, la diversité linguistique, loin d'être envisagée comme une composante constitutive de l'ordre démocratique, demeure reléguée au rang de particularisme à contenir. En procédant ainsi, la Commission et la Cour valident une conception étroite de la liberté d'expression, réduite à sa fonction informative, et minimise l'impact que peuvent avoir les politiques linguistiques sur la construction identitaire des individus et des communautés. Ces jurisprudences traduisent ainsi une réticence à reconnaître la pluralité linguistique comme un élément constitutif de l'ordre démocratique, préférant une lecture unificatrice fondée sur la cohérence institutionnelle. Cependant, cette conception homogénéisante n'est toutefois pas sans contrepoints. Dans l'affaire *Mestan c. Bulgarie* (2023), la Cour Européenne des Droits de l'Homme a opéré un infléchissement significatif, en reconnaissant qu'une interdiction absolue d'utiliser une langue minoritaire, en l'espèce, le turc, lors d'une campagne électorale portait atteinte à la liberté d'expression garantie à l'article 10 de la Convention Européenne des droits de l'homme[40]. Contrairement à l'approche fonctionnaliste adoptée dans les affaires *Mentzen* ou *Leeuw-St-Pierre*, la Cour a ici souligné que la langue n'est pas un simple médium, mais un vecteur de participation politique, en particulier pour les électeurs issus de minorités linguistiques. L'usage du turc permettait au requérant de s'adresser à un public qui ne maîtrisait pas le bulgare, et son interdiction revenait de fait à exclure une partie de la population du débat démocratique. En reconnaissant que le multilinguisme peut être une condition de l'égalité politique, la Cour affirme que la diversité linguistique, loin de fragiliser la démocratie, en constitue une modalité essentielle. Cette décision marque ainsi un glissement vers une reconnaissance plus substantielle du droit à la langue comme une condition de la citoyenneté effective.

Cette logique fonctionnelle prévaut également dans l'interprétation contemporaine du droit à un procès équitable, où la garantie d'un interprète pour les justiciables allophones – telle que prévue à l'article 14(3)(f) du Pacte international relatif aux droits civils et politiques et article 6(3)(e) de la Convention européenne des droits de l'homme – reste enfermée dans une finalité strictement procédurale : il ne s'agit pas de reconnaître la langue comme un attribut identitaire de l'accusé, mais uniquement de prévenir une incompréhension susceptible de vicier la procédure. Cette lecture minimaliste réduit l'assistance linguistique à un correctif ponctuel, mobilisé seulement lorsque l'inégalité de compréhension compromet l'équité formelle du procès. Une telle approche trouve une illustration éloquente dans la pratique judiciaire documentée en République Démocratique du Congo. Dans une étude menée au sein du ressort de la Cour d'appel de Goma, il apparaît que la fonction d'interprète est fréquemment confiée à des greffiers non formés, choisis de manière informelle, sans statut ni encadrement méthodologique. Cette assistance ne couvre que l'audience publique, sans s'étendre aux phases préparatoires du procès, ni aux actes écrits de procédure, souvent rédigés dans une langue inaccessible aux justiciables issus de zones rurales ou appartenant à des groupes linguistiques non dominants[41]. Loin de garantir une participation égalitaire à la justice, ce dispositif institutionnalise une forme d'asymétrie linguistique silencieuse, où la parole judiciaire s'exprime dans un idiome étranger au vécu des individus. La langue, ici, n'est pas perçue comme un droit mais comme une variable technique, contingente et subordonnée à l'impératif d'efficience procédurale. Cette conception évacue la charge symbolique du langage judiciaire et reconduit, sous couvert de neutralité, une hiérarchie implicite des légitimités linguistiques.

Or, c'est précisément dans ce domaine que se joue un enjeu central de reconnaissance. Le deuxième aspect mérite donc d'être souligné : il concerne les espaces où une reconnaissance élargie des droits linguistiques pourrait ou devrait s'exercer de manière plus substantielle. Le procès pénal, et plus généralement les procédures juridictionnelles, offrent à cet égard un terrain d'analyse particulièrement révélateur. Si la traduction fournie à l'accusé est aujourd'hui encadrée par des normes internationales – telles que l'article 6(3)(e) de la Convention européenne des droits de l'homme –, sa mise en œuvre reste souvent cantonnée à une approche purement fonctionnelle. Pourtant, une conception plus ambitieuse de ce droit suppose que la langue de l'accusé soit envisagée non seulement comme un instrument de compréhension, mais comme une composante fondamentale de sa capacité à se défendre, à se faire

[40] Mestan c. Bulgarie, (Cour Européenne des Droits de l'Homme 2023).
[41] K. ZAWADI, *Le Droit à l'usage d'une Langue de Son Choix Dans Un Procès Équitable*, dans *Revue de la Faculté de Droit*, 1, 2016, p. 101.

entendre et à être reconnu comme sujet de droit. Cette nécessité devient d'autant plus évidente dans des contextes où les actes de procédure ou les éléments de preuve sont rédigés dans une langue que l'une des parties ne maîtrise pas. L'arrêt rendu par la Cour de cassation française le 27 novembre 2024 illustre la tension entre exigences d'efficacité procédurale et respect du droit à un procès équitable. En validant l'usage de pièces en langue étrangère non traduites, au nom du pragmatisme judiciaire et de la compétence linguistique supposée des magistrats, la Cour admet que la compréhension subjective du juge puisse pallier l'absence d'une traduction officielle[42]. Si cette décision marque une ouverture vers une justice adaptée à un monde globalisé, elle soulève néanmoins une difficulté fondamentale : celle de l'égalité des armes lorsque la partie adverse ne dispose pas des ressources ou des compétences linguistiques nécessaires pour contester efficacement la preuve produite. Autrement dit, la langue demeure ici un filtre d'accès à la justice : tantôt assouplie au nom de l'économie des procédures, tantôt rigidifiée par des exigences techniques de traduction.

D'autres dispositifs abordent la langue à la marge, notamment dans le domaine de l'éducation. Bien que l'UNESCO, l'UNICEF ou encore l'article 13 du Pacte international relatif aux droits économiques, sociaux et culturels insistent sur l'importance de l'enseignement en langue maternelle, les instruments contraignants restent silencieux sur ce point. La jurisprudence européenne l'a confirmé cependant de manière explicite. Dans son arrêt de 1968 relatif aux lois linguistiques belges, la Cour européenne des droits de l'homme a jugé que l'article 2 du Protocol Additionnel ne garantit pas un droit à l'enseignement dans la langue de son choix, mais uniquement un droit d'accès à l'éducation en tant que tel[43]. Les juges de Strasbourg ont estimé que les Etats disposent d'une large marge d'appréciation pour déterminer la langue d'enseignement, notamment en fonction de considérations territoriales et administratives, validant ainsi le principe d'un enseignement unilingue dans certaines régions. Cette décision consacre une approche fonctionnaliste de la langue au sein du système éducatif, dans laquelle les préférences linguistiques des minorités ne relèvent pas d'un droit opposable, mais d'un arbitrage guidé par des logiques de gestion territoriale et de cohérence institutionnelle. Dans certains contextes nationaux, la reconnaissance juridique du pluralisme linguistique ne relève pas d'un idéal abstrait, mais d'un équilibre minutieux entre histoire, compromis politiques et ingénierie institutionnelle. Le cas du Canada illustre à cet égard une architecture bilingue élaborée autour de la Loi sur les langues officielles, qui érige l'anglais et le français au rang de langues d'égale valeur dans l'ensemble des institutions fédérales : débats parlementaires, décisions judiciaires, services publics, tout y est soumis à l'exigence de symétrie linguistique[44]. Cette reconnaissance se prolonge dans le monde du travail, où les fonctionnaires fédéraux, notamment dans les régions désignées bilingues, peuvent exercer leurs fonctions dans la langue officielle de leur choix, sans que cela n'entrave leurs perspectives de carrière. Mais cette binarité structurante ne suffit plus à épuiser la complexité linguistique canadienne. Depuis 2019, l'adoption de la Loi sur les langues autochtones est venue rappeler que l'histoire linguistique du pays dépasse le seul face-à-face franco-anglais[45]. En consacrant un appui institutionnel à la revitalisation des langues autochtones, le Canada amorce un déplacement normatif, en reconnaissant, au moins en principe, la légitimité de formes d'expression jusque-là marginalisées par l'appareil étatique. La Finlande, quant à elle, fonde son modèle linguistique sur la co-officialité du finnois et du suédois[46]. Cette égalité formelle se traduit par une obligation pour l'administration publique de fournir ses services dans les deux langues. Dans les communes où la population suédophone dépasse un seuil significatif, des dispositifs bilingues doivent être mis en place, affirmant la volonté de l'État finlandais d'assurer une accessibilité linguistique équitable au niveau local. En Suisse, la reconnaissance du plurilinguisme prend une dimension systémique : l'allemand, le français, l'italien et le romanche sont reconnus comme langues nationales, avec des droits d'usage différenciés selon les régions[47]. L'État fédéral garantit une égalité de principe,

[42] Chambre commerciale financière et économique, 23-10.433, 2024.
[43] Affaire "Relative à certains aspects du régime linguistique de l'enseignement en belgique" c. Belgique, (Cour Européenne des droits de l'homme 1968).
[44] Loi sur les langues officielles, (1988).
[45] L. LECOMTE, *Langues Officielles Ou Langues Nationales? Le Choix Du Canada*, p. 11 (2021).
[46] T. OSOBLIVAIA, *Language Translation in Finland: Finnish and Swedish Perspectives*, dans *PoliLingua*, disponible en ligne : https://www.polilingua.com/blog/post/official-languages-of-finland-translate-finnish-swedish.htm.
[47] *Les politiques d'aménagement linguistique: un tour d'horizon*, p. 26 (2010).

tandis que les cantons disposent d'une autonomie normative leur permettant d'ajuster les politiques linguistiques aux réalités territoriales. Ce modèle de gouvernance décentralisée témoigne d'une conception fluide de la diversité linguistique, envisagée non comme une menace à l'unité, mais comme une variable constitutive de l'ordre démocratique. Ces dispositifs, bien que marqués par des compromis historiques (Canada), des équilibres démographiques (Finlande) ou un fédéralisme linguistique avancé (Suisse), convergent vers une même ambition : articuler la reconnaissance des identités linguistiques à l'exigence de fonctionnement institutionnel. Il ne s'agit pas simplement de tolérer la diversité, mais de la structurer juridiquement, tout en la rendant administrativement soutenable. Ainsi se dessine un droit linguistique non plus dérivé, mais intégré – produit d'un arbitrage entre égalité d'accès, stabilité étatique et reconnaissance symbolique.

Les droits linguistiques demeurent aujourd'hui principalement conçus comme des déclinaisons d'autres libertés fondamentales tel que la liberté d'expression, le principe de non-discrimination, ou encore les droits culturels des minorités. Il s'agit dans la majorité des cas d' « applications indirectes » de droits plus généraux, ce qui explique la faiblesse de leur portée normative et les lacunes persistantes dans leur mise en œuvre[48]. Aucun instrument juridique universel ne reconnaît de manière explicite un droit autonome à utiliser sa langue dans les relations avec l'administration, à recevoir des communications officielles dans cette langue, ou à transmettre son héritage linguistique aux générations futures. Ces garanties, lorsqu'elles existent sont généralement réservées aux personnes relevant d'un statut minoritaire spécifique, et même dans ce cadre, leur effectivité demeure incertaine. Ce statut dérivé perpétue une conception utilitariste de la langue, perçue comme un outil accessoire de communication ou d'inclusion sociale. Cette logique est particulièrement manifeste dans les politiques migratoires, où la maîtrise de la langue nationale est érigée en condition préalable à l'obtention de la citoyenneté. Dans ce contexte, la langue devient un instrument de tri social, une « clé d'entrée » dans la communauté nationale, plutôt qu'un droit personnel ou collectif à faire valoir[49]. Loin d'être neutre, cette instrumentalisation linguistique, comme le démontre Bourdieu, produit des effets différenciés selon le profil social des locuteurs : la même compétence langagière peut être valorisée ou disqualifiée selon l'origine, la légitimité perçue ou le capital symbolique de celui qui la mobilise[50]. La non-maîtrise de langue est souvent assimilée à une forme d'inaptitude à s'intégrer, contribuant à justifier l'exclusion ou la hiérarchisation des individus. En ce sens, les inégalités linguistiques se superposent à des inégalités sociales plus profondes, que le droit reste largement impuissant à corriger. C'est ce que traduit également le Cadre Européen Commun de Référence pour les Langues, qui définit la langue comme un ensemble de compétences au service d'objectifs sociaux – accomplir une tâche, mener une interaction – sans reconnaître son rôle identitaire et culturel intrinsèque. Ainsi, se confirme une approche fonctionnaliste de la langue, orientée vers l'adaptation des individus aux structures dominantes plutôt que vers la reconnaissance de la pluralité comme fondement du lien démocratique.

4. Conclusion

La reconnaissance partielle et fragmentaire des droits linguistiques comme droits fondamentaux continue de refléter une architecture normative inachevée, dans laquelle la langue demeure trop souvent cantonnée au rang de simple véhicule fonctionnel. En la subordonnant à des libertés plus classiques – telles la non-discrimination ou la liberté d'expression – le droit international échoue à saisir ce que la langue incarne de plus fondamental : une matrice d'appartenance, une mémoire partagée, une dignité vécue. Cette vision instrumentale, héritée d'un imaginaire assimilationniste, tend à légitimer des dispositifs d'effacement linguistique au nom de l'unité nationale ou de la rationalité administrative. Les conséquences concrètes en sont connues : marginalisation des locuteurs minoritaires, fragilisation des transmissions intergénérationnelles, invisibilisation des voix non dominantes dans les espaces publics et institutionnels.

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[48] E. J. R. VIEYTEZ, *The Protection of Linguistic Minorities: A Historical Approach*, in Lesser used languages and the law in Europe, 5, 2001, p. 6.
[49] V. CONTI, J. D. PIETRO, & M. MATTHEY, *Langue et Cohésion Sociale: Enjeux Politiques et Réponses de Terrain*, Délégation langue française, 2012, p. 25.
[50] P. BOURDIEU, *Ce que parler veut dire : L'économie des échanges linguistiques*, Fayard, 1982.

Il s'avère aujourd'hui nécessaire de repositionner les droits linguistiques au cœur du dispositif des droits humains universels. Non pas comme des droits « spécifiques » réservés à des groupes catégorisés, mais comme des expressions fondamentales de la liberté, de l'égalité et de la dignité humaine. Une telle reconfiguration normative passe par un double mouvement : d'une part, relier les revendications linguistiques aux mécanismes justiciables déjà existants (liberté d'expression, droit à la vie privée, non-discrimination) ; d'autre part, ouvrir la voie à une reconnaissance autonome de la langue comme droit en soi – porteur d'identité, de culture et d'émancipation. En définitive, garantir la justice linguistique ne relève pas d'un luxe multiculturel, mais d'une exigence démocratique élémentaire : celle de permettre à chacun de dire le monde, dans sa langue, sans être sommé de se taire pour exister.

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An Insight into Linguistic Rights before the Courts and in Public Education in the United States of America

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Abstract: This article aims to assess linguistic rights in the United States of America (United States or US). In particular, it will analyze how these rights are protected and reflect on its effectiveness. Linguistic rights are especially important in multilingual and multicultural societies. The United States are such a society. However, we will see that the United States are becoming a monolingual society, or at least are making efforts to implement the use of a sole language in the public sphere, through various legal and other means.
This article consists of three parts. First, it will give an overview of what linguistic rights are and discuss their importance. Furthermore, it will discuss why English is the predominant language in the country today and what other languages play an important role.
Second, it will lay out how linguistic rights are enshrined in the legal sphere and how these are protected. In this part, the article will focus on the legal frameworks for such rights and will take a closer look at how such rights are protected before the United States courts (both at state and federal level). Special attention is also placed on linguistic minorities and protections for native US languages. When looking at protections before the US courts, the article will draw upon relevant case law in the matter.
Finally, the article will look at the protection of linguistic rights in public education. In doing so, it will assess this protection through the lens of relevant case law, as well as public policy and other relevant instruments. Again, here we will look closer at linguistic minorities and native US languages.

Keywords: Court, Education, Native language, Linguistic minorities, Linguistic rights.

1. What are Linguistic Rights?

Linguistic rights, also known as language rights, are the legal protections and entitlements related to the use of language in various domains of public and private life[1]. This article will only analyze linguistic rights in public life. These rights ensure individuals and communities can use, maintain, and develop their languages without discrimination[2].

Language cannot simply be reduced to a means of communication. It is far more than that, as it is intrinsic and shapes the identity and culture of the people speaking it[3]. Therefore, by protecting these languages, we also protect and recognize the identity and the culture of those people. Linguistic rights are especially important in multilingual and multicultural societies. The United States are such a

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[1] M. WOLLACOTT, *What are Linguistic Rights*?, languagehumanities.org (May 23, 2024), https://www.languagehumanities.org/what-are-linguistic-rights.htm? (last visited April 14, 2025).

[2] *Id.*

[3] *Mahe v. Alberta,* [1990], S.C.R. 342 40 (Can).

society[4]. Linguistic rights are recognized and protected in several national and international frameworks[5], such as, *inter alia,* the Universal Declaration of Linguistic Rights[6] and the European Charter of Regional or Minority Languages[7]. According to the International Covenant on Civil and Political Rights (ICCPR, 1966)[8], linguistic rights are fundamental human rights[9] and should therefore be protected. In essence, linguistic rights ensure that linguistic minority groups within society have the ability to use their language freely. The United States signed the ICCPR in 1977 and ratified it in 1992. However, the United States declared that the ICCPR is not automatically enforceable in its domestic courts[10]. Therefore, the ICCPR does not confer directly enforceable rights in the United States. This means that individuals can only invoke such rights after Congress has passed specific legislation to implement the provisions of that Covenant. As a result, US courts generally do not apply the provisions laid out in the ICCPR.

In determining the protection of linguistic rights before US courts and in public education in the US, we therefore have to rely on national instruments to bring about such protection. First, however, we must understand the US language policy.

1.1. A Brief History of Language Policies in the United States

When we think of the United States today, we cannot ignore the fact that the country uses English as its official language. Not only does the country use English, it also uses an anglicized pronunciation for nearly every foreign word, for example the French *croissant*.

An important question emerges regarding where this all comes from and why this is the case. Several elements play an important role in this. First, the US colonial history and its political and legal foundations have introduced English as a dominant language. The initial Thirteen Colonies[11] were primarily settled by English-speaking colonists, which naturally led to the adoption of English in this part of the country. There was also a strong colonial desire to strive for cultural legitimacy within the British Empire by copying metropolitan English linguistics[12]. Furthermore, two important documents that shaped the history and the destiny of the United States, the Declaration of Independence[13] and the Constitution of the United States[14], were written in English. However, they do not refer to English as an official language of the country. Nevertheless, the mere fact that they are written in that language provides an insight into the language that held the power at that time, and which was able to shape the language policy of the time: English. Second, the majority of settlers and immigrants arriving in this new society either spoke English, were assimilated into the language relatively quickly or were absorbed into an English-speaking culture[15]. It was the belief upon arriving in the US that learning English as

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[4] J. NICHOLAS, R. MARKS, R. RAMIREZ, M. RIOS-VARGAS, *2020 Census Illuminates racial and Ethnic Composition of the Country*, United States Census Bureau (August 12, 2021), https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html (last visited April 14, 2025).
[5] M. WOLLACOTT, *What are Linguistic Rights*?, *op. cit*.
[6] Available at: https://unesdoc.unesco.org/ark:/48223/pf0000104267 (last visited April 13, 2025).
[7] Available at: https://rm.coe.int/1680695175 (last visited April 13, 2025).
[8] Available at: https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf (last visited April 14, 2025).
[9] Article 27 ICCPR.
[10] 138 Cong. Rec. S4781-84 (1992).
[11] Namely: Carolina (North and South), Connecticut, Delaware, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Virginia. Virginia (1607) was the first English colony.
[12] P.K. LONGMORE, "*They…Speak Better English Than the English Do": Colonialism and the Origin of National Linguistic Standardization in America,* in *The University of North Carolina Press,* 40, 2005, p. 279.
[13] Available at: https://www.archives.gov/founding-docs/declaration-transcript (last visited April 14, 2025).
[14] Available at: https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm (last visited April 14, 2025).
[15] C. LUU, *When Did Colonial America Gain Linguistic Independence?*, in *JSTOR Daily* (July 4, 2017), https://daily.jstor.org/colonial-america-gain-linguistic-independence/ (last visited April 2, 2025).

quickly as possible was key to economic and social mobility[16]. Third, the majority of *public* schools in the US have always taught in English[17]. On top of that, government documents, legal proceedings and official communications have primarily been in English as well, and still are. Finally, English has been the primary language of business, media and entertainment in the United States, which has helped maintain English as the country's official language.

In light of the forgoing analysis, the policies that have shaped language in the United States have to be examined as well. Surprisingly, or maybe not so much, we will see that, after having adopted and secured protections for languages other than English, including Native Languages[18], English is still the most dominant language in the country.

From the early days of the Pilgrims until mid 1850 the focus of the US language policy was on the status of English versus non-English languages[19]. Initially, non-English languages, such as, *inter alia*, French, German and Spanish, were tolerated[20]. This tolerance manifested itself for example in the right to speak and use one's own native language (other than English)[21]. Certain States (in the earlier days called "Territories") even adopted languages other than English as official languages. For example, in 1845 Louisiana legislators could address the body in either French or English[22] and its Constitutions of 1845 and 1852[23] required all laws to be written in those two languages as well[24]. Until today, the validity of documents extends to documents in both in French and English[25]. However, this tolerance did not extend to non-European languages, such as Native Languages[26]. Indeed, the US government separated Indigenous people from their cultures[27] and from actively engaging in US society by transferring them to reservations. The practice of using languages other than English is not surprising, because of the somewhat unique way the country was formed. In the early days, the United States were a melting pot where many cultures arrived and tried to establish themselves. People arrived here for several reasons: for instance, economic opportunities, the lure of a fresh start and the adventure to go "West". Others were forced to live and work here as slaves. Furthermore, several Indigenous cultures had already long been established here. All these people, those arriving and those already firmly established in the US, not only brought with them their personal and religious background, but also their unique view of life, their culture, and their language. At some point then, as mentioned *supra*, English became the *lingua franca*. However, the adoption and use of English as the working language in the United States is not enshrined in its social contract by default: the US Constitution.

1.2. The Official Language(s) in the United States

The Constitution of the United States does *not* contain an official language provision, such as the constitutions of many other countries. However, the United States are a federal state, and these US states

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[16] *Id.*

[17] M.C. MONTOYA, *Linguistic Diversity in U.S. Education,* in T. GIBBINS, E. BECK and K. VANSLYKE-BRIGGS (eds.), *ReStorying Education in the United States, Critical Perspectives in Public Education,* New York, 2024. However, also non-English instruction was common, yet more dispersed and did not focus on only one foreign language.

[18] The word "native" without capitalization simply refers to someone's first language or refers to someone's country or place of birth. When capitalization is used, it refers to "Indigenous".

[19] T.K. RICENTO and W.E. WRIGHT, *Language Policy and Education in the United States*, in S. MAY and N.H. HORNBERGER (eds), *Encyclopedia of Language and Education*, Boston, 2008, 285.

[20] H. KLOSS, *The American Bilingual Tradition*, Washington D.C., 11, 1998, 13; T.K. RICENTO and W.E. WRIGHT, *op. cit.*, p. 285.

[21] H. KLOSS, *op. cit.*, p. 51.

[22] LOUIS CONST: Art. 104 (1845), available at: https://babel.hathitrust.org/cgi/pt?id=hvd.hx2zy6&seq=85 (last visited April 14, 2025).

[23] LOUIS CONST: Art. 101 (1852), available at https://catalog.hathitrust.org/Record/011450915 (last visited April 14, 2025).

[24] N. GARON, *France within Louisiana Law, Government and Media,* in *Tête-à-Tête*, 2, 2023, p. 3.

[25] *Id.*

[26] T.K. RICENTO and W.E. WRIGHT, *op. cit.*, p. 285.

[27] A.H. LEIBOWITZ, *Educational policy and political acceptance: The imposition of English as the language of instruction in American Schools*, Washington D.C., 1971, p. 70.

have their own constitutions as well. Indeed, several of those states have adopted such *de jure* provisions, sometimes even by voter initiative[28]. In 1920, Nebraska became the first state to declare English as its official language[29]. As of April 2025, of the 50 US states, 32 have adopted English as their official language[30]. Many of those states, *inter alia,* Arizona, California, Georgia, Missouri, and others, have written this in their respective constitutions. For example, Article III, Section 6(b), of the Constitution of California reads: "English is the official language of the State of California". Furthermore, it refers to English as "the common language of the people of the United States of America and California"[31]. The state of Hawaii is a notable exception in this list, as it adopted both English *and* Hawaiian[32] as the official languages in its Constitution, even requiring the use of Hawaiian for certain public acts[33]. In doing so, Hawaii protects both the use of a minority language and a Native Language on its territory. Alaska is another state that has multiple official languages, 21 (including English), protecting thereby minority as well as Native Languages[34]. Of those 21 languages, 20 Native Languages are in danger of extinction[35]. Louisiana and New Mexico refer to other languages as *significant* languages, but have not written it in their respective constitutions or granted them official status[36]. South Dakota on the other hand, uses English as its official language, but in 2019 declared O'ceti Sakowin, which is comprised of the dialects of Lakota, Dakota and Nakota, as an official "Indigenous Language"[37]. However, the state does not grant it an official status on par with English.

The need of these states to declare English as an official language resulted from a fear of American disunity and the increase of Spanish in the United States[38], given the fact that by 2050, the Latino population will amount to 24% of the US population[39], not to mention many other languages that are on the rise. As language is also an instrument to solidify power in a country, in the United States this fear resulted in an "English-Only" movement[40]. This says something about the predominant mindset and culture in the country. The message from both people and the legislature is clear: *The United States are for Americans, and Americans speak English – and we would like to keep it that way.* All other languages feel "problematic" (as we will see in Chapter 3).

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[28] R. BYRNE, *Thirty states have adopted English as an official language, 11 through ballot measures since 1920,* Ballotpedia News (3 March, 2025), https://news.ballotpedia.org/2025/03/03/thirty-states-have-adopted-english-as-an-official-language-11-through-ballot-measures-since-1920/ (last visited April 2, 2025).

[29] S.W. CROWE, *Comparatively speaking: language rights in the United States and Canada,* in *Canada-United States Law Journal*, 37, 2012, p. 218.

[30] D. CHIACU, *Trump to make English official US language, White House official says*, Reuters (28 February, 2025), https://www.reuters.com/world/us/trump-make-english-official-us-language-source-says-2025-02-28/ last visited April 2, 2025).

[31] CAL CONST. art. III, § 6(a), available at: https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=CONS&tocTitle=+California+Constitution+-+CONS (last visited April 14, 2025).

[32] A distinction should be made between Hawaiian (ʻŌlelo Hawaiʻi) and Hawaiian Pidgin. The first is an official language, the second is not, though it is widely spoken in the state. ʻŌlelo Hawaiʻi is and Indigenous Polynesian language.

[33] HAWAII CONST . art. XV, § 4, available at: https://lrb.hawaii.gov/constitution/ (last visited April 14, 2025).

[34] Governor of the State of Alaska Administrative Order No. 300.

[35] *Id*.

[36] French is recognized in Louisiana, due to a strong Cajun and Creole heritage. New Mexico recognizes Spanish and certain Native American languages in government and education.

[37] L. KACZKE, *South Dakota recognizes official indigenous language*, Argus Leader (22 March, 2019), https://eu.argusleader.com/story/news/politics/2019/03/22/south-dakota-recognizes-official-indigenous-language-governor-noem/3245113002/ (last visited April 2, 2025).

[38] L.S. SALINAS, *Immigration and Language Rights: The Evolution of Private Racist Attitudes into American Public Law and Policy*, in *Nevada Law Journal*, 7, 2007, p. 902.

[39] *Id.*

[40] S.W. CROWE, *op. cit.*, p. 218.

However, the official explanation is another. On March 1, 2025, President Donald J. Trump (Rep.) signed an Executive Order to designate English as the official language of the United States,[41] thus, solidifying it as the official *federal* language. The government believes that the designation of one official language – English – is in the United States' best interest as it will "promote unity, cultivate a shared [US] culture for all citizens, ensure consistency in government operations, and create a pathway to civic engagement"[42]. However, this does not mean that current linguistic protections will no longer apply. It also aims at accelerating the adoption of English by all its citizens[43]. In particular, this Executive Order will affect linguistic protections (generally) in the following way. First, agencies and recipients of federal funding are no longer required to provide extensive language assistance to non-English speakers. Second, agencies are allowed to keep current policies in place and still provide documents and services in other languages, but this Order encourages "new Americans" to learn and adopt English. Finally, agencies will keep their flexibility to decide how and when to offer services in languages other than English. This last point indicates that the power to decide which language to adopt in the agency rests with the Secretary or Administrator of the respective agency. As we will see in Chapter 3, similar policies exist with regard to public education. In reality, this often leads to adopting an "English-Only" approach as the use of any other language is seen as "problematic" (*infra*).

2. Ensuring Linguistic Rights before US Courts

In this section, we will analyze how linguistic rights are protected before US state and federal courts. We will analyze the *de jure* obligations of courts to ensure such rights, and observe how these obligations are not always met. First, we will focus on the courts' obligations in ensuring such rights as well as the legal frameworks establishing them. We will also delve deeper into the right to use an interpreter if needed. Second, special attention is placed on current issues obstructing the effective protection of linguistic rights before US courts. Finally, we will focus on certain issues relating to the composition of the jury and language.

2.1. The Right to an Interpreter

In the United States, English is the primary language used in legal proceedings across federal and state courts. Cases are generally brought to court in English, and all official documents, testimonies, and proceedings are conducted in English[44]. To accommodate individuals with Limited English Proficiency (LEP), US courts provide language access services, including interpreters and translated materials, to ensure fair participation in legal processes. It is important that these services are provided, to uphold justice and accuracy in judicial proceedings[45].

Since 1978, all US federal courts must provide interpreters for LEP individuals in all criminal actions and civil actions brought by the US government[46] (*infra*). This obligation was laid out in the 1978 Court Interpreters Act. The US government has also pointed out that state courts receiving federal financial assistance must provide interpreters free of charge in all types of cases brought before them,

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[41] THE WHITE HOUSE, *Designating English as the Official Language of the United States*, 1 March 2025, https://www.whitehouse.gov/presidential-actions/2025/03/designating-english-as-the-official-language-of-the-united-states/ (last visited April 2, 2025).

[42] Executive Order March 1, 2025, §§ 1 and 3, available at: https://www.whitehouse.gov/presidential-actions/2025/03/designating-english-as-the-official-language-of-the-united-states/ (last visited April 14, 2025).

[43] THE WHITE HOUSE, *Fact Sheet: President Donald J. Trump Designates English as the Official Language of the United States*, 1 March 2025, *https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-designates-english-as-the-official-language-of-the-united-states/* (last visited April 2, 2025).

[44] L.K. ABEL, *Language Access in the Federal Courts,* in *Drake Law Review,* 61, 2013, p. 593; AMERICAN BAR ASSOCIATION, Standing Committee on Legal Aid and Indigent Defendants, *Standards for Language Access in Courts,* 2012 (hereinafter: ABA Standards).

[45] ABA Standards, 2.

[46] Court Interpreters Act, Pub. L. No. 95-539, 92. Stat. 2040 (1978) [codified as amended at 28 U.S.C. §§ 1827-28 (2006)].

in order to comply with Title VI of the 1964 Civil Rights Act[47] which prohibits discrimination based on national origin among others[48]. The American Bar Association also recommends that LEP individuals have meaningful access to all the services provided by the court[49]. The right to an interpreter is also derived from the Fourteenth Amendment[50] of the US Constitution. Indeed, without an interpreter, due process can be violated. At the time of writing, all US states provide interpreter services for LEP individuals in court proceedings. Furthermore, according to the National Center for State Courts, most states also have established language plans, including, *inter alia*, language access plans, interpreter certification and credentialing systems, translation of court documents and even remote interpreter services[51].

According to the Court Interpreters Act, federal courts are required to provide interpreters for LEP individuals in two types of cases. The first type of case requiring interpreter services is in all criminal and civil actions brought by the US government. Here, the court *must* provide an interpreter[52], although this might not be entirely free of charge. The second is in all civil actions brought by someone other than the US government[53], thus excluding this right in criminal actions. Here, the language softens, and courts shall, were possible, make interpreters available at a charge[54]. In reality, federal district courts and bankruptcy courts usually do not provide such services themselves, so this is left to the parties[55]. The reality is thus that LEP civil litigants are often denied interpreters[56]. However, in civil cases not brought by the US government, courts can also provide reimbursement for interpreter expenses[57].

The reason why the Court Interpreters Acts is silent on the right to an interpreter in criminal actions not brought by the US government has to do with the Sixth Amendment of the US Constitution and derived case law in that regard. Under the Sixth Amendment of the US Constitution, "the accused shall enjoy the right to a speedy and public trial, […] to be informed of the nature and cause of the accusation […] and to have the assistance of counsel for his defense." The right to participate and have assistance of counsel for defense also includes the right to an interpreter. This has been established by case law. For instance, in *United States v. Negrón*[58], the Second Circuit held that failure to provide an interpreter to a Spanish-speaking defendant denied this person the rights granted under the Sixth Amendment. Not granting the defendant an interpreter would obstruct this defendant from participating in the court proceedings and that person's own defense in a meaningful way.

Finally, something has to be said about the language of these interpretations, as well as the quality. When a person is in need of an interpreter, this interpreter translates the language of the proceedings, English, into another language. This other language is often Spanish[59]. Spanish interpreters are generally held in high regard, providing a high standard of excellence[60]. However, this also comes at a cost, namely that resources for other languages, especially Haitian Creole and Navajo (an Indigenous Language), are less available[61]. Indeed, while promoting a standard of excellence in legal interpretation in Spanish

[47] Available at: https://www.archives.gov/milestone-documents/civil-rights-act (last visited April 14, 2025).
[48] L.K. ABEL, *op. cit.*, p. 596.
[49] ABA Standards, 15.
[50] Available at: https://constitutioncenter.org/the-constitution/amendments (last visited April 14, 2025).
[51] NATIONAL CENTER FOR STATE COURTS, Language Access Services Section, *Limited English Proficiency and the State Courts Final Report*, 2019, https://www.ncsc.org/__data/assets/pdf_file/0027/19494/sji-lep-final-report-5-8-19-web-version.pdf (last visited April 12, 2025).
[52] 28 U.S.C. § 1827(d)(1).
[53] L.K. ABEL, *op. cit.*, p. 607.
[54] 28 U.S.C. § 1827(g)(4).
[55] 28 U.S.C. § 260; L.K. ABEL, *op. cit.*, p. 607.
[56] L.K. ABEL, ABEL, *op. cit.*, p. 608.
[57] *Id.*
[58] 434 F.2d 386 (2d Cir. 1970).
[59] Spanish is the most sought-after language, followed by Mandarin, Russian and Cantonese.
[60] L.K. ABEL, *op. cit.*, p. 614-15.
[61] *Id*. at p. 615.

before US courts, the federal government has failed to provide interpreter certifications for other languages[62]. State courts on the other hand, provide their own court interpreter certifications (*supra*).

2.2. Issues Obstructing Linguistic Rights before US Courts

Although there are frameworks in place to ensure people have access to interpreters before US courts, some issues deserve closer attention. First, some judges deny access to interpreters for people that understand or speak at least some English. Second, documents are often only available in English. Third, bi- or multilingual people can be excluded from the jury if the court deems this necessary.

The reality is such that a person with basic English does not necessarily qualify as an LEP in all cases, at least in the eyes of certain judges. Indeed, the Court Interpreters Act only states that, in cases brought before the court by the US government, an interpreter shall be provided when a person "speaks only or primarily a language other than the English language […] so as to inhibit such party's comprehension of the proceedings […] or so as to inhibit such witness' comprehension of questions and presentations of such testimony"[63]. As a result, some judges have interpreted "inhibit" narrowly, thus allowing a person who can understand or speak at least some English to be denied an interpreter[64]. For instance, in *Gonzalez v. United States*[65], the Ninth Circuit found no clear error in the District Court's decision not to appoint an interpreter for a Spanish-speaking criminal defendant who could not speak English well, could not read English at all, and responded to questions in a manner the opposition characterized as "inarticulate"[66]. The Ninth Circuit pointed out that the Court Interpreters Act required appointment of an interpreter only if a defendant's difficulty with the English language was a "major" problem[67]. Despite this ruling, some state courts interpret this "inhibit" more broadly and require that an interpreter still be provided to people that are able to understand or speak some English[68].

A second problem regarding the effective protection of linguistic rights before US courts is that vital documents, such as court forms, instructions, websites and other written materials, are sometimes only available in English, although progress is being made in that regard, albeit mostly in Spanish[69].

Finally, a person's ability to understand or speak languages other than English might see that person excluded from the jury. This is because some judges believe that a given bi- or multilingual juror might either (i) be affected by a party speaking a language that this juror understands, "inviolating" the juror's decision, or (ii) affect the other jurors during the deliberations due to a sympathy or understanding of the party's non-US cultural background[70]. In *Hernández v. New York*[71], the US Supreme Court found that while the use of peremptory strikes to exclude Spanish-speaking jurors raised a plausible (but not necessary) inference that language might be a pretext for race discrimination, excluding bilingual jurors through the use of a strike did not violate the US Constitution[72]. Here, the US Supreme Court looked at language not through the lens of race, but through that of culture[73] and suggested that language might indeed be considered something more than a choice or mutable characteristics[74], leaving the door open

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[62] UNITED STATES COURTS, *Federal Court Interpreters,* available at: https://www.uscourts.gov/court-programs/federal-court-interpreters (last visited April 12, 2025).
[63] 28 U.S.C. § 1827(d)(1)(a).
[64] L.K. ABEL, *op. cit.*, p. 620.
[65] 33 F.3d 1047, (9th Cir. 1994).
[66] *Gonzalez v. United States* at 1053; L.K. ABEL, *op. cit.*, p. 621.
[67] *Gonzalez v. United States* at 1050; ABEL, *op. cit.*, p. 621.
[68] *Id.* at 621-22.
[69] *Id.* at 625-27.
[70] C.M. RODRÍGUEZ, *Accommodating Linguistic Difference: Towards a Comprehensive Theory of Language Rights in the United States,* in *Harvard Civil Rights-Civil Liberties Law Review*, 36, 2001, p. 203.
[71] 500 U.S. 79 (1986).
[72] *Hernández v. New York* at 371-72; C.M. RODRÍGUEZ, *op. cit.*, p. 205.
[73] *Hernández v. New York* at 370.
[74] C.M. RODRÍGUEZ, *op. cit.*, p. 206.

for linguistic minorities to deserve access to political institutions as linguistic minorities[75]. Interestingly, the Supreme Court also held that bilingual jurors can have an important role to play, namely in bringing any discrepancies they find in translations to attention to the judge, albeit under responsibility[76]. However, most courts have not followed these open doors in *Hernández*, and thus continue to strike bi- or multilingual jurors for the reasons mentioned above[77]. In doing so, entire communities might be prevented from taking up their civic duties, might be discriminated against, maybe not based on race, but under the veil of "language", and might be obstructed from participating effectively in a democratic society. Regardless, like we will see in Chapter 3, it has been, and still is, a person's ability to speak (preferably only) English that gives that person the best cards when dealing with US courts.

3. Linguistic Rights in US Public Education

Linguistic rights in US public education derive from several policies and instruments. In general, language policies not only derive from official enactments of governing bodies or authorities, such as legislation, executive directives, judicial orders or decrees, but also from policy statements, voter-approved initiatives and non-official institutional or individual practices or customs. Policies may also evolve as a consequence of actions governments do not take[78].

3.1. A Brief History of Education and Language in the United States

The relationship between public education and language in the United States is rather delicate and complex. Initially, around 1800, it was not uncommon to educate children in their own language, of course in combination with English[79]. Less than a hundred years later, with the emergence of free and compulsory schooling, English became the dominant language, and other languages were seen as more controversial[80]. There was a clear policy behind public education at that time, namely to "assimilate" immigrants into the US culture, especially the newly arrived from Southern and Eastern Europe[81]. By 1920, bilingualism and thus bilingual education came under attack. Psychological studies showed that bilingual children suffered from a language handicap. In comparison with monolingual children, they were found to score lower in both verbal and non-verbal intelligence tests[82]. This, in combination with other factors, such as, *inter alia,* a more rigid immigration policy and a strong Americanization movement, saw English triumph in public education[83]. As a result, all non-English languages, including Native Languages, were strongly discouraged and de-emphasized in public education, which made way for a growing "English-Only" movement across[84] the United States[85]. However, in the 1960s, the US government took a more active role in promoting non-English education (*infra*).

3.2. Legal Frameworks ensuring Linguistic Rights in Public Education

Linguistic rights in US public education can be derived from several legal sources. It is important to note that linguistic rights in the US in general are mostly always derived from or coupled to another

[75] *Id.*
[76] *Hernández v. New York* at 364.
[77] C.M. RODRÍGUEZ, *op. cit.*, p. 206.
[78] T.K. RICENTO and W.E. WRIGHT, cit., p. 285.
[79] D.K. PALMER, C.E, ZUÑIGA, and K. HENDERSON, *A Dual Language Revolution in the United States?*, in W.E. WRIGHT, S. BOUN, AND O. GARCÍA (eds.), *The Handbook of Bilingual and Multilingual Education*, Hoboken (NJ), 2015, p. 450.
[80] D.K. PALMER, C.E, ZUÑIGA, and K. HENDERSON, *op. cit.*, p. 450; H. KLOSS, *op. cit.*, p. 51.
[81] C. SCHMID, *The Politics of English Only in the United States: Historical, Social and Legal Aspects*, in R.D. GONZALEZ and I. MELIS (eds.), *Language ideologies: Critical Perspectives on the Official English Movement,* New York, 2001, p. 66.
[82] *Id.*
[83] C. SCHMID, *op. cit.*, p. 66; T.K. RICENTO and W.E. WRIGHT, cit., p. 295.
[84] Although differences existed between states.
[85] D.K. PALMER, C.E, ZUÑIGA, and K. HENDERSON, *op. cit.*, p. 450.

right, such as non-discrimination based on race or national origin (*infra*). However, we will see that the trend is to assimilate LEP students into English, more and more through "English-Only" instruction.

In the 1960s, the right to bilingual education was fairly well established. Title VII[86] of the Elementary and Secondary Education Act (1995)[87] provided protections for linguistic rights in education[88]. In essence, it provided for bilingual students to receive instruction in their native language, and then gradually be assimilated into English[89]. Furthermore, bilingual education was funded by the federal government[90]. In 1968, the Bilingual Education Act allowed for the use of non-English languages in the education of low-income language minority students who had been segregated in inferior schools or been placed in "English-Only" classrooms[91]. This changed in the early 2000s, when President George W. Bush (Rep.) signed the No Child Left Behind Act[92] (*No Child Left Behind*). In Title III of that Act, the reference to "bilingual education" was suddenly replaced by "English language acquisition"[93], which clearly underscores that English is the main language in public education. However, under *No Child Left Behind*, students had the right to receive instruction in their native language for the first five years of education, after being assimilated into English instruction[94]. *No Child Left Behind* established an important pillar from which significant case law later followed (*infra*). In essence, it intendeds to hold states accountable for increasing English proficiency in its schools by requiring "demonstrated improvements" in English proficiency of LEP students each year, as well as "adequate yearly progress" for those students[95], without providing an instructional approach[96]. Furthermore, as education falls essentially within the remit of the state, these states also have broad discretion in educational programming and thus in complying with *No Child Left Behind*. It is clear that the shift from the Bilingual Education Act to *No Child Left Behind* is a mindset and policy shift from seeing bilingual education, or multilingualism in general, as a strength to multilingualism as "problematic" and thus adopting an "English-Only" policy in practice.

The protection of Native Languages also deserves some attention. In 1974, Congress adopted the Native American Programs Act, which awarded federal grants to ensure the "survival and continuing vitality of Native American Languages"[97]. The 1990 Native American Language Act endorses the preservation of Native Languages and requires government agencies to promote this as well[98]. However, before 1978 students with an Indigenous background were not eligible for admission to federally funded bilingual programs for the mere fact that English was reported as their dominant language[99], and thus did not qualify as LEP students as such. Even though English was reported as their dominant language, some Indigenous students still encountered difficulties in "English-Only" classrooms, because different tribes used different varieties of English. In 2002, Title VII of *No Child Left Behind* laid down provisions to ensure that elementary and secondary school programs for Indigenous people were reformed to best serve Indigenous students. Despite these provisions, Title VII does not mention opportunities for those students to develop and maintain their tribal languages[100]. In reality, *No Child Left Behind* does not

[86] Title VII ESEA is also known as the Bilingual Education Act.
[87] P.L. 89-10 (1195).
[88] S.W. CROWE, *op. cit.*, p. 220.
[89] *Id*.
[90] T.K. RICENTO and W.E. WRIGHT, *op. cit*.
[91] *Id.* p. 287.
[92] Available at: https://www.congress.gov/bill/107th-congress/house-bill/1/text (last visited 14 April 2025).
[93] T. W. ENGLAND, *Bilingual Education: Lessons from Abroad for America's Pending Crisis*, in *Washington University Law Review,* 86, 2009, p. 1222.
[94] T.K. RICENTO and W.E. WRIGHT, *op. cit.*, p. 287.
[95] No Child Left Behind Act, 20, U.S.C. § 3102 (2001); S.W. CROWE, *op. cit.*, p. 220.
[96] T.K. RICENTO and W.E. WRIGHT, *op. cit.*, p. 287.
[97] Native American Programs Act (1974), U.S.C., § 2991b-3(a)(2) (2006).
[98] T.K. RICENTO and W.E. WRIGHT, *op. cit.*, p. 287.
[99] *Id*. p. 288.
[100] *Id*.

appear to facilitate revitalization programs for Native Languages and Cultures[101] and appears to indeed leave behind some students.

3.3. US Courts on Linguistic Rights in Public Education

When discussing the protection of linguistic rights before US courts, or the violation thereof, courts often rely on other legal frameworks to interpret such rights and violations. For instance, the Fourteenth Amendment of the US Constitution, which contains the Equal Protection and Due Process Clauses. Other relevant frameworks are Title VI of the 1964 Civil Rights Act[102] and the 1974 Equal Educational Opportunities Act[103], which provide statutory bases for linguistic rights[104]. Hence, linguistic rights are rarely interpreted in their own right, but always in relation to another, such as the right not to be discriminated against based on race or national origin, or further, the right to equal opportunity.

The most significant court case in relation to linguistic rights protection in public education in the US is *Lau v. Nichols*[105]. The United States Supreme Court ruled that a school district's failure to provide programs for non-English-speaking students (in this case students with a Chinese heritage) to assist them in overcoming their language barriers violated Title VI of the 1964 Civil Rights Acts. However, the Court did not specify any appropriate remedy[106]. In the wake of this ruling, the Office for Civil Rights adopted the Lau Remedies. It instructed school districts on how to identify and evaluate limited and non-English-speaking children, "treatments" to use (including bilingual education), and established exit criteria and standards professional teachers had to meet[107]. Soon after, strong political opposition emerged regarding the maintenance of bilingual programs, which led to the fact that such programs became "transitional", meaning that students were transferred to "English-Only" programs only after three years in bilingual classrooms[108]. It highlights the US government's attitude in this regard, namely that the ultimate civil rights objective here was the rapid acquisition of English by linguistic minorities and minimizing separate language tracks in schools[109]. To put it differently: linguistic difference was something that had to be *overcome* rather than embraced. It held that discrimination occurs when non-English-speaking students are *not* given instruction in English[110]. Thus, multilingualism in general is seen as "problematic", as there is a fear that this will negatively impact a person's ability to speak English well and integrate into US society accordingly. Today, nationwide access to bilingual programs for English learners remains rather limited due to (i) a shortage of highly qualified teachers and (ii) strong political opposition to providing such students access to these programs[111].

As a result of *Lau v. Nichols* and the Lau Remedies, the courts have continued to interpret language as a *deficiency* to be overcome[112]. For instance, in *Guadalupe Organization, Inc. v. Tempe Elementary School District No. 3*[113], the Ninth Circuit ruled that Title VI of the 1964 Civil Rights Act did not require

[101] *Id.* p. 289.
[102] C.M. RODRÍGUEZ, *op. cit.*, p. 210.
[103] Available at: https://www.congress.gov/bill/93rd-congress/house-bill/40 (last visited 14 April 2025).
[104] *Id.* at 287.
[105] 414 U.S. 563 (1974).
[106] *Id*.
[107] T.K. RICENTO and W.E. WRIGHT, *op. cit.*, p. 288.
[108] *Id.*
[109] M. JIMÉNEZ, *The Educational Rights of Language-Minority Children,* in J. CRAWFORD (ed.), *Language Loyalties: A Source Book on the Official English Controversy,* Chicago, 1992, pp. 245-46; C.M. RODRÍGUEZ, *Accommodating Linguistic Difference: Towards a Comprehensive Theory of Language Rights in the United States*, p. 212.
[110] C.M. RODRÍGUEZ, *op. cit.*, p. 210.
[111] L. VILLEGAS, *State of Language Rights and Bilingual Education 50 years after Lau vs. Nichols*, New America, 6 February 2024, https://www.newamerica.org/education-policy/edcentral/state-of-language-rights-and-bilingual-education-50-years-after-lau-vs-nichols/ (last visited April 5, 2025).
[112] C.M. RODRÍGUEZ, *op. cit.*, p. 212.
[113] 587 F.2d 1022, 1029 (9th Cir. 1978).

schools to provide non-English-speaking students a bilingual-bicultural education[114], but simply that schools are required to rectify language deficiencies of such students. In another case, *United States v. Texas*[115], the District Court concluded that "bilingual education is designed to fill an educational vacuum until a particular child is able to function adequately in an all English classroom"[116]. In *Castañeda v. Pickard*[117], the plaintiff asked the Court to create a bilingual education requirement. The Court rejected this challenge, fearing that (i) an overemphasis on the acquisition of the English language adversely affected students' cognitive development[118] and (ii) labeling students with language deficiencies would be associated with low-intelligence[119]. Finally, in *Valeria G. v. Wilson*[120], the Court ruled that all remedies for linguistic barriers should take form of transitional programs[121], in order to ensure that students gain access to "the American dream of economic and social advancement"[122]. In light of these cases, a strong debate and belief emerged in several states[123], namely that it would be best to abolish bilingual education altogether. For instance, the state of California passed Proposition 227 in 1998, which ended most bilingual education programs in public schools. This proposition was a clear manifestation of an "English-Only" approach in public education. However, in 2016, the same state passed Proposition 58, repealing the former one. The new proposition gave schools the flexibility to offer bi- and multilingual programs, if enough support existed.

We can conclude that linguistic rights in US public education are not so much understood as a right to language, and more specifically, as a right to use one's own native language, but rather as a right to the English language[124]. This, once again, affirms that multilingualism is seen as "problematic", and that English is the predominant language in the United States, through and through, from policy to court rulings. In order to gain access to "the American dream of economic and social advancement" (*supra*), it is best one indeed speaks (only) English.

4. Conclusion

We can conclude that, even before designating English as the official language of the United States of America, English had been used as the country's official language since its founding. This is also true with regards to US courts, as well as in US public education. Several frameworks are in place to protect linguistic rights in the US, both before the courts and in public education, but the country's attitude is that multilingualism is "problematic". Before US federal and state courts, LEP individuals have the right to an interpreter in certain situations, but, in practice, this is not always free of charge and mostly limited to Spanish. Furthermore, a person's knowledge of a non-English language or the fact that this given person has a non-US background, might see that person excluded from the jury if the judge so decides. This substantially hinders this given individual in participating effectively in a democratic society. In public education, preference is still given to "English-Only" education and bi- or multilingual programs are seen as transitional to English education. Linguistic rights are protected to the extent that LEP students assimilate English rather quickly and transfer to "English-Only" education. These findings underscore that US policy with regards to linguistic rights is a policy seen from the perspective of the English language. In the US, a right to language exists, albeit a right to the English language. In designating English as the official language of the United States, it has become clear that the US government envisions a country for Americans where its people speak (only) English.

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[114] C.M. RODRÍGUEZ, *op. cit.*, p. 212.
[115] 506 F. Supp. 405 (E.D. Tex. 1981).
[116] *United States v. Texas* at 419.
[117] 648 F.2.d 989, 1015 (5th Cir. 1981).
[118] C.M. RODRÍGUEZ, *op. cit.*, p. 214.
[119] *Id.* p. 215.
[120] 12 F. Supp. 2d 1007 (N.D. Cal. 1998).
[121] C.M. RODRÍGUEZ, *op. cit.*, p. 215.
[122] *Valeria G. v. Wilson* at 1013.
[123] Although this varies. Some states are even open to the idea of offering such programs instead.
[124] C.M. RODRÍGUEZ, *op. cit.*, p. 212.

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The Application of Comparative Law Methods in the Legal Translation Process

A Theoretical Framework for Translational Comparative Legal Analysis

*Przemysław Kusik**

Abstract: This paper aims to provide an overview of contemporary comparative law methods and demonstrate their potential for use in legal translation. While it focuses on a theoretical framework for such applications (except for one practical example), it has been preceded by other studies in which the framework proposed was tested based on examples from Polish-English legal translation. The present paper is, in particular, intended to share some of the findings of the author's research to date with a wider international audience. It needs to be noted that although numerous authors in the field of legal translation studies present the view that comparative law and legal translation are closely related, they usually do not offer a broader overview of comparative law methods or suggest ways in which these methods are supposed to be used by translators. When such references do occur, they mainly concern the traditional functional method without considering the more pluralistic approaches that have emerged in comparative law in the last three decades. The paper proposes to distinguish the general method and the specific methods of comparative law and points to possible ways of adapting them for legal translation purposes as part of a process named 'translational comparative legal analysis'. It also suggests that translators and translation scholars should more often tap into comparative law methodology in search of solutions useful for legal translation purposes.

Keywords: Comparative law, Comparative legal studies, Legal translation, Comparative law methods, Translational comparative legal analysis.

1 Introduction

Links between comparative law and legal translation have been referred to by multiple authors. There are even claims that legal translation and comparative law are essentially "the very same thing"[1], or that the translation of legal texts constitutes "comparative law in practice"[2]. Legal translation is described as an exercise in or of comparative law[3]. Indeed, it is hard not to notice the obvious connections between these areas. Legal translation can be defined as "the translation of texts used in law and legal settings"[4]

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[1] P. SCHROTH, *Legal Translation*, in *The American Journal of Comparative Law*, no. 34, 1986, p. 53.

[2] G-R. DE GROOT, *Problems of Legal Translation from the Point of View of a Comparative Lawyer: Seven Theses for the XIth World Conference of Federation Internationale des Traducteurs*, in *Van taal tot taal*, vol. 31, no. 4, 1987, p. 189.

[3] A. GALLI, *Introduction: Legal Translation as Cross-Cultural Communication*, in K. W. JUNKER (ed.), *US Law for Civil Lawyers*, Baden-Baden, 2021, p. 5; F. PRIETO RAMOS, *Developing Legal Translation Competence: An Integrative Process-Oriented Approach*, in *Comparative Legilinguistics*, no. 5, pp. 13, 16.

[4] D. CAO, *Translating Law*, Clevedon, 2007, p. 12.

or "translation of texts for legal purposes and in legal settings"[5]. This means that it often involves a confrontation not only of different languages but also of the law expressed in these languages originating from different legal systems. Comparative law is, in turn, described as "a shorthand for various ways to study and explain the differences and similarities between (broadly understood) legal systems"[6]. Both legal translation studies (LTS)[7] and comparative law[8] have grown into research areas of their own.

However, despite the equating of comparative law and legal translation[9], their mutual autonomy needs to be acknowledged. This is evidenced by, among other things, the different goals of comparative law and translation activities[10], the different roles that law comparison plays in comparative law and legal translation, as well as the different scales of comparative enquiry they entail[11]. Looking at models of comparative law research found in comparative law literature[12], it is difficult to imagine a translator conducting analyses on a similar scale for each problematic term in the source text[13].

Perhaps due to the overhasty equating of legal translation and comparative law, LTS literature, with a few notable exceptions[14], usually does not offer a broader overview of comparative law methods or provide guidelines on how translators should use them. The traditional functional method, adapted for the purposes of legal translation by Šarčević through a redefined notion of 'functional equivalent'[15], is the only comparative law method that has been analysed to a relatively broad extent. Although it holds a strong position in comparative law itself[16], the latter has undergone significant development in the last three decades[17]. This has been accompanied by a certain change in its focus, mentality and spirit[18]. Nowadays, a comparatist is said to have a 'pluralist toolbox' of methods at his or her disposal[19] rather than the one and only correct method, as functionalism was once perceived[20]. These newer

[5] J. ENGBERG, *Legal Meaning Assumptions – What Are the Consequences for Legal Interpretation and Legal Translation?*, in *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique*, vol. 15, no. 4, 2002, p. 375.
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[13] P. KUSIK, *English Translation Equivalents of Selected Polish Partnership Types Revisited from the Perspective of Comparative Law*, in *Lingua Legis*, no. 30, 2022, p. 22.
[14] See e.g. J. ENGBERG, *Developing an Integrative Approach for Accessing Comparative Legal Knowledge for Translation*, in *Revista de Llengua i Dret, Journal of Language and Law*, vol. 68, 2017, pp. 5–18.
[15] S. ŠARČEVIĆ, *New Approach to Legal Translation*, The Hague, 1997, pp. 235–249.
[16] P. G. MONATERI, *Comparative Legal Methods*, Cheltenham, 2021, p. 7.
[17] J. HUSA, *A New Introduction to Comparative Law*, Oxford, 2015, p. 3; G. SAMUEL, *An Introduction to Comparative Law Theory and Method*, Oxford, 2014, pp. 3, 16.
[18] J. HUSA, *A New Introduction to Comparative Law*, cit., p. 3.
[19] M. VAN HOECKE, *Methodology of Comparative Legal Research*, in *Law and Method*, 2015, p. 28, https://doi.org/10.5553/REM/.000010.
[20] K. ZWEIGERT, H. KÖTZ, *An Introduction to Comparative Law*, Oxford, 1998, p. 34.

methodological approaches have remained – again, with several exceptions[21] – largely unnoticed in LTS.

For the above reasons, it may not be clear whether – and if so, to what extent – comparative law methodology[22] at its current stage of development is suitable for use in legal translation. In order to provide more clarity on this issue, the present paper briefly introduces the foundations of comparative law methodology (Section 2), offers a summary of contemporary comparative law methods (Section 3) and shows some ways to adapt their elements for legal translation purposes (Section 4). The application of this framework is demonstrated based on one practical example from Polish-English legal translation (Section 5). Finally, some general conclusions and recommendations are presented (Section 6).

2 Comparative law methodology

At the outset, it should be noted that law, in its scientific dimension, is classified as a social science, and its subject matter is the analysis of legal norms and broadly understood legal-political institutions. It performs tasks characteristic of theoretical and practical sciences[23]. Comparative law, in turn, can be classified among auxiliary legal sciences in their broad sense[24]. It is also referred to as a meta-discipline of law. The task of meta-disciplines is to elucidate legal contexts and place law in time and space, not only in the narrowly understood normative sphere of a given legal system[25]. A sophisticated understanding of comparative law methodology requires the comparatist to go beyond law itself towards the general methodology of the social sciences[26].

The concept of method in comparative law is said to refer to "all practices and operations by means of which pieces of information describing phenomena are collected and the justifiable rules on the basis of which interpretations concerning the study topics are formed and argumentatively expressed"[27]. From the perspective of comparative law practice, a method is the study of a given legal issue by comparing two legal systems, comprehensively assessing the practical responses in each of the legal systems analysed, establishing similarities and differences, and attempting to determine their legal, political, social and other causes[28]. Legrand, on the other hand, is critical of the concept of method in comparative law, pointing out that a comparatist should not be a slave to any method, and each method is a preferred method of a given interpreter, created by him or her to achieve some goal[29].

Samuel draws a methodological map of comparative law using the concept of a scheme of intelligibility, stemming from sociological literature and meaning "the way natural or social facts are perceived and represented – the way they are 'read' by the observer"[30]. Berthelot distinguished between causal, functional, structural, hermeneutical, dialectical and actional schemes[31]. Each scheme of intelligibility focuses on a specific fragment of the reality under study, which also indicates the existence of different dimensions of knowledge[32].

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[21] J. ENGBERG, *Developing an Integrative Approach for Accessing Comparative Legal Knowledge for Translation,* cit., pp. 5–18; S. POMMER, *Translation as Intercultural Transfer: The Case of Law*, in *SKASE Journal of Translation and Interpretation*, vol. 3, no. 1, 2008, pp. 17–21; S. SKYTIOTI, *Comparative Law and Language with Reference to Case Law*, in *Studies in Logic, Grammar and Rhetoric*, vol. 66, no. 1, 2021, pp. 105–114.

[22] For a critique of this term, see M. EL KADMIRI, *Semantical Discordances of Comparison in Law Negatively Defined: Comparative Law as Methodology vs 'Comparative Law Methodology' as Tautology*, in *Comparative Law and Language*, vol. 3, no. 1, 2024, pp. 80–91.

[23] L. MORAWSKI, *Wstęp do prawoznawstwa*, Toruń, 2014, pp. 12–13.

[24] J. HELIOS, W. JEDLECKA, *Podstawowe pojęcia prawa i prawoznawstwa dla ekonomistów*, Wrocław, 2015, pp. 13–14.

[25] J. HUSA, *A New Introduction to Comparative Law*, cit., pp. 56–57.

[26] G. SAMUEL, *op. cit.*, p. 79.

[27] J. HUSA, *A New Introduction to Comparative Law*, cit., pp. 98–99.

[28] U. KISCHEL, *op. cit.*, pp. 152–153.

[29] P. LEGRAND, *Negative Comparative Law*, in *Journal of Comparative Law*, vol. 10, no. 2, 2015, pp. 435–436.

[30] G. SAMUEL, *op. cit.*, p. 81.

[31] M. BERTHELOT, *Programmes, paradigmes, disciplines: pluralité et unité des sciences sociales*, in M. BERTHELOT (ed.), *Épistémologie des sciences sociales*, Paris, 2001, p. 484, as cited by G. SAMUEL, *op. cit.*, pp. 83–84.

[32] G. SAMUEL, *op. cit*., pp. 92–95.

In view of the above, it is difficult to claim that there is only one useful comparative law method. The particular approaches are not intrinsically better or worse than others, but they provide access to different types of knowledge specific to them[33]. Indeed, contemporary comparative law is a pluralistic area of knowledge not only in terms of content but also in terms of methodology. It strives for a broad, rich and – most importantly – more contextual study of law than before, which, at the same time, requires a flexible approach to comparative law methodology[34]. Comparative law can serve different purposes, which means that it is possible to use many methods as part of it in an effective way[35] as long as they provide answers to questions that are interesting for the comparative lawyer[36]. It is pointed out that one needs to avoid 'methodological chauvinism', i.e. arbitrary attribution of epistemic effectiveness only to a given researcher's preferred method[37].

The overview of comparative law methods in Section 3 is inspired by Samuel's account of comparative law methodology[38], supplemented by contributions from other authors. At the same time, it needs to be noted that the very term 'method' is polysemous. Hence, different names and taxonomies of comparative law methods can be found. This notwithstanding, it seems the overview reflects roughly the entire methodological landscape of comparative law.

3 An overview of comparative law methods

In the present paper, comparative law methods will be divided into the general method, which consists in comparison itself, and specific methods, which determine the detailed course of the comparison process[39].

3.1. General method

Comparison constitutes "the essence of comparative law"[40]. It is a generally adopted epistemological practice whose basic goal is to obtain new knowledge – to learn[41]. Comparative law can, at the same time, be considered "an advanced application of comparative knowledge formation"[42]. Thus, it may be said that the general method of comparative law consists of a number of overarching issues relating to the comparison process. These issues cut across, and are addressed by, the detailed approaches referred to as specific methods.

One of these cross-cutting issues is the discussion in comparative law literature on the perspective from which law is observed. On the one hand, comparative law is supposed to provide a special comparative legal perspective, enabling the observer to place himself or herself outside his or her own legal system. Such a perspective makes it possible to understand the historical origins of the classifications known to a legal system, the relative nature of its concepts, and the political and social conditioning of the system's institutions[43]. On the other hand, the researcher must reflect on the extent to which his or her own cultural assumptions as an observer shape the questions asked and influence the acceptance of the answers obtained as convincing[44]. According to others, objective comparison is not

[33] G. SAMUEL, *op. cit.*, p. 95.
[34] J. HUSA, *Interdisciplinary Comparative Law: Rubbing Shoulders with the Neighbours or Standing Alone in a Crowd*, cit., pp. 16–17, 196.
[35] M. SIEMS, *Comparative Law*, Cambridge, 2019, p. 9.
[36] J. HUSA, *A New Introduction to Comparative Law*, cit., p. 99.
[37] R. TOKARCZYK, *Komparatystyka prawnicza*, Kraków, 1999, pp. 177–178.
[38] G. SAMUEL, *op. cit*.
[39] A different division into general and specific methods has been proposed by R. TOKARCZYK, *op. cit.*, pp. 178–185.
[40] M. BOGDAN, *Concise Introduction to Comparative Law*, Groningen, 2013, p. 45.
[41] R. TOKARCZYK, *op. cit.*, p. 30.
[42] J. HUSA, *A New Introduction to Comparative Law*, cit., p. 63.
[43] R. DAVID, J. E. C. BRIERLEY, *Major Legal Systems in the World Today*, London, 1985, pp. 5–6.
[44] D. NELKEN, *Legal Culture*, in J. M. SMITS (ed.), *Elgar Encyclopaedia of Comparative Law*, Cheltenham, 2006, pp. 377.

possible at all, as it is impossible to eliminate a comparatist's cultural bias. Observing an object, for example, a certain legal tradition, means shaping it. The comparatist is therefore always a participant observer[45]. There is also an intermediate approach to this issue, called 'cultural immersion', adopted by Grosswald Curran[46].

Furthermore, it is worth noting the controversies regarding the researcher's orientation towards finding similarities or differences. There is some competition in this respect between the supporters of the presumption of similarity (*praesumptio similitudinis*) of the practical results achieved by particular legal systems[47] and the supporters of the presumption of difference[48] (*principium individuationis*[49]), criticising the former for trying to demonstrate the sameness of laws belonging to different legal systems and depreciating differences[50]. Others point out that it is generally reasonable to look for both similarities and differences between the legal systems under consideration, albeit the goal of the study may also be relevant in this respect[51].

One of the most important methodological tasks of a comparatist is the selection of a *tertium comparationis*. This term can be understood in different ways: as a certain conceptual framework[52], as a common characteristic that makes legal phenomena comparable (a function, goal, problem, factual situation or the solutions offered)[53] or as a comparative metalanguage[54]. Since claims about similarity or difference are in most cases subjective – and in social or cultural studies, there are normally no metric scales – the intersubjective meaning of comparison is vital to avoid arbitrariness. It is based on a shared understanding of what is significant and on the basic scales of difference. For this reason, it is important to reflect on one's epistemological interests and inform other researchers about the motives or reasons for choosing a given *tertium comparationis*[55].

As far as the object of comparison is concerned, i.e. the question of what law is, different answers can be provided, in particular, by legal theorists and by comparatists[56]. Due to definitional problems, legal practice has adopted the concept of law in the legal sense, which primarily sees law as a collection of rules[57]. Such a model of law is the most enduring[58]. The focus on law as rules in comparisons (the so-called black-letter comparison) is one of the criticisms of traditional comparative law[59]. Nevertheless, it should be noted that Zweigert and Kötz, its leading exponents, clearly state that when identifying the rules of the legal systems being studied, comparatists should take into account not only the rules contained in legislation and case law (law in books) but also the conditions of business, customs, practices, and in fact everything that contributes to shaping human behaviour in the situation under

[45] P. LEGRAND, *Comparative Legal Studies and Commitment to Theory*, cit., p. 266.
[46] V. GROSSWALD CURRAN, *Cultural Immersion, Difference and Categories in U.S. Comparative Law*, in *The American Journal of Comparative Law*, vol. 46, no. 1, 1998, pp. 43–92.
[47] K. ZWEIGERT, H. KÖTZ, *op. cit.*, pp. 34, 39–40.
[48] G. SAMUEL, *op. cit.*, pp. 54–55.
[49] P. LEGRAND, *The Same and the Different*, in P. LEGRAND, R. MUNDAY (eds.), *Comparative Legal Studies: Traditions and Transitions*, Cambridge, 2003, p. 272.
[50] P. LEGRAND, *The Same and the Different*, cit., p. 245; G. FRANKENBERG, *Critical Comparisons: Re-thinking Comparative Law*, in *Harvard International Law Journal*, vol. 26, no. 2, 1985, pp. 436–437; G. SAMUEL, *op. cit.*, pp. 54–55.
[51] G. DANNEMANN, *Comparative Law: Study of Similarities or Differences?*, in M. REIMANN, R. ZIMMERMANN (eds.), *The Oxford Handbook of Comparative Law*, Oxford, 2019, pp. 413–422, https://doi.org/10.1093/oxfordhb/9780198810230.013.12.
[52] J. HUSA, *A New Introduction to Comparative Law*, cit., pp. 149–151.
[53] E. ÖRÜCÜ, *Methodological Aspects of Comparative Law*, in *European Journal of Law Reform*, vol 8, no. 1, 2006, p. 36.
[54] M. VAN HOECKE, *op. cit.*, p. 28.
[55] N. JANSEN, *Comparative Law and Comparative Knowledge*, in M. REIMANN, R. ZIMMERMANN (eds.), *The Oxford Handbook of Comparative Law*, Oxford, 2019, pp. 295–300, https://doi.org/10.1093/oxfordhb/9780198810230.013.10.
[56] G. SAMUEL, *op. cit.*, p. 121.
[57] T. CHAUVIN, T. STAWECKI, P. WINCZOREK, *Wstęp do prawoznawstwa*, Warszawa, 2017, pp. 17–18.
[58] G. SAMUEL, *op. cit.*, pp. 121–122.
[59] M. SIEMS, *New Directions in Comparative Law*, in M. REIMANN, R. ZIMMERMANN (eds.), *The Oxford Handbook of Comparative Law*, Oxford, 2019, p. 856, https://doi.org/10.1093/oxfordhb/9780198810230.013.48.

study[60].

An alternative to the concept of law as rules is the realist approach. According to it, knowledge about law should be sought in the socially and psychologically conditioned minds of interpreters[61]. Beneath the level of external law (law in books), which is the easiest to recognise, a range of forces are at work. They help understand how law actually operates in society. The mission of comparative law is to provide the tools for examining the whole range of forces that constitute the internal dimension of law (law in action). Law must thus be viewed in a more comprehensive way, encompassing external law, internal law, and the culture on which it is based[62]. Indeed, living law is shaped by different legal formants, the basic categories of which include statutes, legal scholarship and case law. Exploring law requires recognising all the legal formants of a given system and determining the role of each. Notably, there may be greater or lesser disharmony between individual formants[63].

Further objects of comparison can be legal mentalities (*mentalité*)[64]. In this case, comparison aims to "explicate how a community thinks about the law and why it thinks about the law in the way it does"[65]. It is thus vital to recognise not only law in books or law in action but also law in minds[66]. Moreover, comparisons can be made between legal concepts[67] and legal systems[68].

3.2. Functional method

The functional method seeks answers to the following questions: "Which institution in system B performs an equivalent function to the one under survey in system A?"; "How is a specific social or legal problem encountered both in society A and society B, resolved?" Either question leads to the identification of functional equivalents[69]. No doubt, the basic scheme of intelligibility applied in this method is the functional one, albeit the causal scheme can also be noticed. This is because a social problem is perceived as causing the existence of a certain institution[70].

The basic assumptions of the functional method are that the societies being studied share common problems or social needs, that somewhere in these societies, they are solved or satisfied, and that the means used are different but – in terms of their equivalent functions – comparable[71]. The functional method aims to enable the abstraction of rules from their local dimension so that the researcher can focus on their operative content, regardless of the context of the source legal system[72].

As put by Michaels, "the functional method has become both the mantra and the *bête noire* of comparative law. For its proponents it is the most, perhaps the only, fruitful method. For its opponents it represents everything bad about mainstream comparative law"[73]. According to Graziadei, the contemporary criticism of functionalism does not stem from its failure, but – on the contrary – from its

[60] K. ZWEIGERT, H. KÖTZ, *op. cit.*, pp. 10–11, 35–36.
[61] G. SAMUEL, *op. cit.*, pp. 121–125.
[62] E. J. EBERLE, *op. cit.*, pp. 57, 64–65.
[63] R. SACCO, *Legal Formants: A Dynamic Approach to Comparative Law (Installment I of II)*, in *The American Journal of Comparative Law*, vol. 39, no. 1, 1991, pp. 21–34, https://doi.org/10.2307/840669.
[64] G. SAMUEL, *op. cit.*, p. 126.
[65] P. LEGRAND, *European Legal Systems Are Not Converging*, in *The International and Comparative Law Quarterly*, vol. 45, no. 1, 1996, p. 60.
[66] W. B. EWALD, *Comparative Jurisprudence (I): What Was It Like to Try a Rat?*, in *University of Pennsylvania Law Review*, vol. 143, 1995, pp. 2111, 2130, 2145.
[67] U. KISCHEL, *op. cit.*, pp. 162–164.
[68] G. SAMUEL, *op. cit.*, pp. 131–133.
[69] As already mentioned, this concept has been borrowed by ŠARČEVIĆ, *op. cit.*, pp. 235–236; E. ÖRÜCÜ, *The Enigma of Comparative Law: Variations on a Theme for the Twenty-First Century*, Leiden, 2004, p. 29.
[70] R. MICHAELS, *The Functional Method of Comparative Law*, in M. REIMANN, R. ZIMMERMANN (eds.), *The Oxford Handbook of Comparative Law*, Oxford, 2019, p. 363, https://doi.org/10.1093/oxfordhb/9780198810230.013.11.
[71] E. ÖRÜCÜ, *The Enigma of Comparative Law: Variations on a Theme for the Twenty-First Century*, cit., p. 29.
[72] E. ÖRÜCÜ, *Methodological Aspects of Comparative Law*, cit., p. 41.
[73] R. MICHAELS, *op. cit.*, pp. 347, 361.

success. The results of sophisticated functional research have expanded comparative law knowledge and have entered mainstream legal thinking[74].

The functional method is, therefore, a useful tool, although it is only one of the methods of comparative law, and its limitations undermine claims that it should be the basic approach[75]. The limitations of functionalism include, in particular, the risk of excluding from the comparison quite similar rules that do not fulfil the same function in the legal systems under study. This may also lead to limiting the scope of comparisons to legal systems that are at the same stage of legal, political and economic development. In addition, some areas of law are considered less suitable for functional comparisons due to the strong influence of geographical, socio-political and cultural factors and other peculiarities. In a given country, a legal problem taken as the basis for comparison may not exist[76]. Moreover, the functional method is particularly suitable for micro-comparative research[77].

Apparently as a response to the postmodern criticism, new approaches to functionalism have emerged in comparative law scholarship. They point to the misinterpretation of this method by its critics and the discrepancy between its fundamentally correct theory and flawed applications. Such new approaches to functionalism include Kischel's contextual comparative law[78] and Michael's interpretative functionalism[79], as well as research in the common core approach[80]. A common feature of all these novel trends is an attempt to raise the importance of the context of law, which traditional functionalism has been accused of neglecting.

3.3. Structural method

A crucial concept for the structural scheme of intelligibility is a system. In this light, law is seen as a legal system that constitutes a certain whole in terms of structure and/or classification[81]. Structuralism in comparative law is based on the belief that understanding individual legal rules in a certain legal system requires understanding the underlying principles and interrelated elements of the system[82]. The elements of a legal system cannot be analysed independently of each other but should be seen in the light of their mutual relationships. "The law is not simply the sum of the specific elements in which every legal framework is expressed [...] but the product of an organic connection of all these elements together"[83].

The structural method is characterised by trying to see units of law at various levels (norms, systems, families) as certain structures distinguished by their specific internal arrangement[84]. Identification of structures is also a means for establishing similarities and differences[85]. The structural method is used to search for similar structural elements and sometimes to try to determine the reasons for the absence of such elements. Once similar structural elements have been identified, they are studied to explain their socio-economic function or how they came to exist and took on their current form. Thus, the structural method can be described as "examining legal architecture"[86]. It also underlies various classifications of legal systems, e.g. into legal families[87].

A weakness of the structural method may be its very focus on structures, which pushes into the

[74] M. GRAZIADEI, *The functionalist heritage*, in P. LEGRAND, R. MUNDAY, *Comparative Legal Studies: Traditions and Transitions*, Cambridge, 2003, pp. 113, 125–127.
[75] G. SAMUEL, *op. cit.*, p. 81.
[76] M. SIEMS, *Comparative Law*, cit., pp. 33–35.
[77] R. MICHAELS, *op. cit.*, pp. 346–347; G. SAMUEL, *op. cit.*, p. 81.
[78] U. KISCHEL, *op. cit.*, pp. 167–174.
[79] R. MICHAELS, *op. cit.*, p. 377.
[80] M. GRAZIADEI, *The functionalist heritage*, cit., pp. 117–118.
[81] G. SAMUEL, *op. cit.*, p. 96.
[82] M. SIEMS, *Comparative Law*, cit., p. 126.
[83] P. G. MONATERI, *op. cit.*, pp. 8–9.
[84] R. TOKARCZYK, *op. cit.*, p. 184.
[85] M. SIEMS, *Comparative Law*, cit., p. 126.
[86] J. HUSA, *A New Introduction to Comparative Law*, cit., p. 127.
[87] M. VAN HOECKE, *op. cit.*, pp. 11–13.

background the analysis of the content of the elements of law being compared[88]. This points to the tension between seemingly objective structural classifications and the pursuit of an interpretative explanation of the complexity of legal traditions. It is also indicated that structuralism assumes the existence of certain constant elements that define a system over time, whereas legal traditions evolve, and the same elements assume unexpected configurations and meanings[89]. It may also be difficult to determine the nature and structure of the system itself. Indeed, it is possible to construct different structural schemes, and particular members of a given legal system may perceive its structure differently[90].

3.4. Hermeneutical method

In the social sciences, the hermeneutical scheme of intelligibility responds to the needs of researching phenomena originating in human consciousness. It is a means of understanding human life through historical and psychological processes[91].

The hermeneutical method of comparative law is also put under the heading of 'postmodern comparative law'. Following postmodernist approaches in other fields, it focuses on differences. It does not seek common denominators of legal systems but aims to appreciate their complexity. The hermeneutical method questions the belief in full rationality and objectivity[92]. A comparatist should treat positive rules and categories as signifiers of a deeper mentality functioning in the complex matrix of a foreign legal culture rather than compare them at the textual level[93]. Indeed, the nature of legal texts is accounted for by a combination of historical, political, social, philosophical, linguistic, economic and epistemological factors, which make up culture[94]. In the hermeneutical method, a comparatist seeks not a cause, but a meaning. He or she should strive to explain foreign law to a lawyer of his or her native system from the perspective of the mentality of the foreign legal system, carrying the audience between legal mentalities, as it were[95].

Legrand points out that knowledge of foreign law cannot exist outside the comparatist's mind without being marked by his or her neural and sensory apparatus. Better access to foreign law is thus gained not by eliminating factors influencing its understanding but by increasing them. "The more readings are garnered, the more interpretations are fabricated, the more writings are produced – in sum, the more the singularity of the foreign finds itself being elicited from various angles – the more insightful understanding of foreign law is likely to prove"[96]. Accordingly, a comparatist should get rid of illusions about his or her own objectivity and about the neutrality of research and the tools used. A critical dialogue between legal cultures – familiar and foreign – is desirable[97].

Grosswald Curran's immersive approach can be considered a slightly milder version of the hermeneutical method. According to her, the proper way to study another legal culture is to immerse oneself in the political, economic, historical and linguistic contexts that shape a given legal system and in which it functions[98].

Postmodern comparatists have been criticised – in return, as it were – by supporters of the traditionally oriented comparative law. The postmodern movement is said to aim at "deconstructive

[88] R. TOKARCZYK, *op. cit.*, p. 184.
[89] P. G. MONATERI, *op. cit.*, pp. 8–9.
[90] G. SAMUEL, *op. cit.*, p. 107.
[91] G. SAMUEL, *op. cit.*, pp. 114–115.
[92] M. SIEMS, *Comparative Law*, cit., pp. 115–116.
[93] P. LEGRAND (ed.), *Comparer les droits, résolument*, Paris, 2009, pp. 228–229, as cited by G. SAMUEL, *op. cit.*, pp. 110.
[94] P. LEGRAND, *Negative Comparative Law*, cit., p. 429.
[95] P. LEGRAND (ed.), *Comparer les droits, résolument*, Paris, 2009, pp. 228–238, as cited by G. SAMUEL, *op. cit.*, pp. 110–111.
[96] P. LEGRAND, *Negative Comparative Law*, cit., pp. 432–433.
[97] G. FRANKENBERG, *Comparative Law as Critique*, Cheltenham, 2016, pp. 230–231.
[98] V. GROSSWALD CURRAN, *op. cit.*, pp. 43–92.

disruption", which is not accompanied by constructive alternatives[99]. Postmodernists are accused of not translating their views into practice, of using incomprehensible language and of not drawing on specific examples. It is even said that the postmodern approach has no method, nor does it strive to develop one, and that comparative law studies describing themselves as postmodern are scarce and basically do not differ from traditional comparative law[100]. According to critics, there is no room for comparative law to fall "into the hands of philosophers, anthropologists, and incomprehensible post-modernists"[101].

3.5. Other methods

Other comparative law methods include socio-legal comparative law, which is characterised by, among other things, reflection on how law and society are linked in a causal relationship. This approach reflects the popularity of socio-legal and empirical research using qualitative and quantitative methods to study law[102]. Its methods include, among others, inferential statistics, interviews, surveys, observation of trials, collecting data on litigation and qualitative historical research[103].

There is also the so-called numerical comparative law, which raises the question of how to obtain quantitative information about law. Its methods include counting facts about law, coding law and conducting surveys about law[104]. The category of numerical comparative law can also be extended to the use of quantitative methods within the approach known as 'comparative law and economics', which stems from the economic analysis of law[105].

As mentioned earlier, the above overview does not enumerate all possible comparative law methods in their different classifications encountered in comparative law literature[106]. However, it seems to cover roughly the entire methodological horizon of contemporary comparative law.

4 Proposed adaptation of comparative law methods for legal translation purposes

Although LTS is situated at the interface between translation studies and law[107], this does not mean that the methods of comparative law and legal translation are the same. One should consider the distinction between comparative law and translation referred to in Section 1. If LTS and practical legal translation activity are to benefit in some way from comparative law, particularly its methods, this might be achieved by adapting certain elements of these methods, bearing in mind the distinctive nature of legal translation.

4.1. Preliminary remarks

As aptly pointed out by Engberg, a translator may draw on the accomplishments of other research areas in an eclectic way if this helps him or her make relevant translation decisions[108]. The above analysis has shown that a pluralistic methodological approach is also advocated currently in comparative law. At the same time, it should be remembered that the goal of legal translation is not to study law as such but

[99] M. BOGDAN, *op. cit.*, pp. 49–50.
[100] U. KISCHEL, *op. cit.*, 97–98, 151–152.
[101] B. S. MARKESINIS, J. FEDTKE, *Engaging with Foreign Law*, Oxford, 2009, p. 69.
[102] M. SIEMS, *Comparative Law*, cit., p. 147.
[103] M. SIEMS, *Comparative Law*, cit., pp. 156–157.
[104] M. SIEMS, *Comparative Law*, cit., pp. 181–182.
[105] F. PARISI, B. LUPPI, *Quantitative Methods in Comparative Law*, in P. G. MONATERI (ed.), *Methods of Comparative Law*, Cheltenham, 2012, pp. 306–316.
[106] See e.g. R. TOKARCZYK, *op. cit.*, pp. 178–185; S. POMMER, *Rechtsübersetzung und Rechtsvergleichung. Translatologische Fragen zur Interdisziplinarität*, Frankfurt a. M., 2006, pp. 100–101; M. VAN HOECKE, *op. cit.*, pp. 16–18.
[107] F. PRIETO RAMOS, *Legal Translation Studies as Interdiscipline: Scope and Evolution*, cit., p. 266.
[108] J. ENGBERG, *Comparative Law for Legal Translation: Through Multiple Perspectives to Multidimensional Knowledge*, in *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique*, vol. 33, no. 2, 2020, p. 276, https://doi.org/10.1007/s11196-020-09706-9.

to convey the legal meaning of the source text (term) through the target text (term)[109]. Therefore, comparative law methods – described in comparative law literature primarily in the context of scientific activity – will not be used in legal translation as research (scientific) methods, even though the work of a translator resembles that of a researcher[110]. The adaptation of comparative law methods to legal translation can be considered primarily from a praxeological point of view, which is suitable for describing the translation process[111].

Since information about law obtained using various intelligibility schemes can potentially contribute to the right translation decisions, the usefulness of different comparative law methods for legal translation should be analysed. The most suitable candidates are the general, functional, structural and hermeneutical methods. For practical reasons, it is difficult to imagine a translator using typically sociological or statistical methods. The use of comparative law methods adapted for legal translation purposes can be referred to as 'translational comparative legal analysis' to distinguish it from actual comparative law research.

4.2. Adaptation of the general method

It seems that a number of aspects of comparison as the general method of comparative law (see Subsection 3.1) can be relevant to legal translation. Notably, at a very general level, comparison can be considered a common element of comparative law and legal translation. An adaptation of the general method would, in turn, mean introducing a comparative law dimension into the linguistically oriented translation process. The translator should thus take into account – to the extent feasible for him or her – the perspective from which law is looked at by the comparatist. This notwithstanding, the translator should define his or her own perspective as an observer of a foreign legal system, that is, define himself or herself as a representative of a certain legal culture and a member of a specific community and professional environment.

In addition to self-reflection on the way of perceiving foreign law – so as not to impose one's own epistemic categories on it – an important aspect of the general method is the selection of a *tertium comparationis*. Like comparative judgments, translation decisions should not be arbitrary. A good example of a metalanguage which – as a *tertium comparationis* – can be used by a translator when comparing concepts and elements of law from different legal systems is the one proposed by Šarčević. It is based on the division of characteristics of concepts into essential and additional ones and on the formulation of certain criteria for the acceptability of potential equivalents[112].

A useful tool for translators could also be the heuristic presumption of difference (as opposed to the ontological one)[113]. By adopting the presumption of difference, the translator would expect that his or her native legal system and the foreign legal system may differ significantly. Hence, the translator would first establish differences between the concepts under examination and then juxtapose them with similarities, trying, as it were, to refute the thesis that the differences prevail. This could help avoid risky and hasty judgments about similarity. Indeed, it is safer to reject an uncertain target term than to use it based on apparent similarities.

The general method can also provide a comparative legal understanding of law, which takes into account its various dimensions. Going beyond the concept of law as rules would facilitate the proper reading of the legal sense of the terms analysed and, at the same time, prevent excessive focus on legal

[109] P. KUSIK, *Zastosowanie metod prawnoporównawczych w procesie tłumaczenia na przykładzie polsko-angielskiego przekładu terminologii z zakresu prawa rzeczowego*, Warszawa, 2025, pp. 111–123, https://doi.org/10.53271/2025.029.
[110] E. ALCARAZ VARÓ, B. HUGHES, *Legal Translation Explained*, Manchester, 2002, p. 153.
[111] G. GWÓŹDŹ, *Translatoryka. Umiejscowienie, rola, kierunki rozwoju, zadania*, in *Zagadnienia Naukoznawstwa*, vol. 2, no. 208, 2016, p. 264.
[112] S. ŠARČEVIĆ, *op. cit.*, pp. 237–249.
[113] C. VALCKE, M. GRELLETTE, *Three Functions of Function in Comparative Legal Studies*, in M. ADAMS, D. HEIRBAUT (eds.), *The Method and Culture of Comparative Law, Essays in Honour of Mark Van Hoecke*, Oxford, 2014, pp. 99–111.

concepts alone. This also implies the use of a variety of sources of law and of legal knowledge, definitely more reliable than dictionaries. As Samuel aptly notes, "focusing on words and dictionaries is not comparative law"[114].

4.3. Adaptation of the functional method

The functional method – as adapted by Šarčević[115] – seems to remain an adequate tool for legal translation purposes. However, it is worth considering critical approaches to this method and its more contemporary versions that attach greater importance to the context of law. Primarily, it is important to recognise that the functional method is not the only one and that it might not provide a full picture of reality.

Apart from indicating potential equivalents in the form of functional equivalents, understood as terms denoting a concept fulfilling a function identical or similar to that of the source concept, the functional method could also be used in a slightly broader way. Namely, it could be a means of exploring the legal regulation in the target legal system concerning the factual situation (social problem) in relation to which the source legal term was used. This could provide a better insight into the relevant fragment of the target legal system.

4.4. Adaptation of the structural method

The structural method can be utilised in legal translation at several levels. Firstly, it is possible to use it to review the structure of the legal systems being analysed from the macro-comparative level to the meso-comparative level to the micro-comparative level[116]. This may help obtain a broader picture of the legal system under examination, thus avoiding concentration on isolated elements of legal reality in a way that does not consider their context.

The structural method can also point out an initial direction for translational comparative legal analysis, leading to the identification of a potential natural equivalent, which can be referred to as a 'structural equivalent' (parallel to the functional equivalent concept). Its identification would be based on the place of the respective concept in the structure of the target legal system corresponding to the place of the source concept in the source system.

Exploring structural relations in the systems being examined may also allow the translator to avoid using translation equivalents that refer to undesirable elements of these systems' structures or imply incorrect structural relations in the source system. Finally, the structure of a legal institution and its embeddedness in a certain structure can serve as criteria for the comparison of the respective source and target legal terms[117].

4.5. Adaptation of the hermeneutical method

The hermeneutical method may provide the translator with a perspective on the source legal text and other texts that he or she is analysing comparatively as cultural products shaped by a number of factors, including epistemological, historical, political, social, philosophical, linguistic, economic and geographical ones. Such a broader perspective on the source text being translated, as well as on the texts of the target system analysed in the course of the translation process, can help the translator gain a more

[114] G. SAMUEL, *op. cit.*, p. 147.
[115] S. ŠARČEVIĆ, *op. cit.*, p. 236.
[116] More on the various levels of comparative law research in: M. VAN HOECKE, *op. cit.*, p. 21; K. ZWEIGERT, H. KÖTZ, *op. cit.*, pp. 4–5; E. ÖRÜCÜ, *Methodological Aspects of Comparative Law*, cit., p. 31. An example of an analysis for the purposes of legal translation arranged in this manner can be found in a separate case study by the author: P. KUSIK, *The Right to the Environment? Article 4(1) of the Polish Environmental Protection Law Act from a Combined Comparative Law and Polish-English Legal Translation Perspective*, in *Comparative Legilinguistics*, vol. 56, 2023, pp. 195–221, https://doi.org/10.14746/cl.56.2023.3.
[117] S. ŠARČEVIĆ, *op. cit.*, pp. 242–244.

in-depth understanding of law, which consists of not only rules but also the actions of people equipped with a specific legal mentality.

The hermeneutical method also encourages a self-critical approach to one's own perspective and questions the belief in an objective vision of foreign law. Above all, it highlights the differences between the elements of legal reality of cultural and ideological nature. Exploring the context and legal culture of the legal systems associated with the source and target languages may allow the translator to avoid hasty conclusions about the similarity of the legal systems being explored, including the similarity of terms in the source and target languages (e.g. false friends).

5 An example of the practical application of translational comparative legal analysis

For the sake of a brief practical demonstration, the present section will discuss the translation of one of the terms examined in the author's PhD project, namely *ostatni spokojny stan posiadania*. The term is used in Article 153 of the Polish Civil Code. A fragment of this provision, along with its three existing translations retrieved from the LEX[118] and Legalis[119] databases, has been presented in Table 1 below. These examples may be helpful for international readers to understand the legal issue involved and will be treated as a source of potential translation equivalents.

Source text	Translation 1 (LEX)	Translation 2 (Legalis)	Translation 3 (Legalis)
Art. 153. Jeżeli granice gruntów stały się sporne, a stanu prawnego nie można stwierdzić, ustala się granice według ostatniego spokojnego stanu posiadania. […]	Article 153. If the boundaries of land became disputable and their legal status may not be ascertained, the boundaries shall be determined in conformity with the last peaceful enjoyment of possession. […]	Art. 153 If the boundaries of lands have become an object of dispute and their legal status cannot be established, the boundaries shall be delimited accordingly to the last peaceful state of possession. […]	Art. 153. If land boundaries are disputed and the legal status cannot be determined, the boundaries are established as at the last peaceful possession. […]

Table 1: A fragment of Article 153 of the Polish Civil Code accompanied by its existing translations (the problematic term and its translation equivalents proposed by particular translators are underlined).

As can be seen, the term is potentially problematic. It has been rendered in quite different ways by the particular translators. Of course, it is unknown whether these translators employed any comparative law methods in their work.

According to the theoretical framework proposed in the present paper, a legal translator seeking to establish an English translation equivalent (assuming the English legal system as the target one) conveying the legal sense of the source term should first look at this translation task in the broader macro- and mesocomparative contexts. In particular, the translator needs to bear in mind the overall differences between civil law and common law traditions and their distinct paths of development. Furthermore, differences between property law in systems belonging to these traditions ought to be considered. Notably, conceptual differences in this field between common law and civil law systems are particularly pronounced[120]. One of such differences relates to the nature of possession (referred to in the problematic term) and its relationship with the right of ownership, including the protection of possession and ownership[121]. In this way, the translator will realise that special caution is needed to avoid misunderstandings. Unless the translator has sufficient knowledge regarding the above subject matter in the Polish and English legal systems acquired in the course of his or her education or practice, he or she

[118] https://sip.lex.pl.
[119] https://sip.legalis.pl.
[120] See e.g. L. BEREZOWSKI, *Jak czytać, rozumieć i tłumaczyć dokumenty prawnicze i gospodarcze?*, Warszawa, 2018, pp. 179–188.
[121] M. GRAZIADEI, *The Structure of Property Ownership and the Common Law/Civil Law Divide*, in M. GRAZIADEI, L. D. SMITH (eds.), *Comparative Property Law. Global Perspectives*, Cheltenham, 2017, pp. 92–94.

may use relevant resources, for instance, legal textbooks, legal blogs or comparative works like the one cited in footnote 121.

The steps discussed so far have involved the use of the general method, namely introducing a comparative law dimension into the analysis. In particular, the translator has adopted a comparative legal perspective on the legal systems concerned, trying to be critical of one's own point of view, paying attention to differences and using relevant sources. Moreover, the structural method has been used to undertake an overview of the respective legal systems at different levels. The hermeneutical method, in turn, has helped appreciate the deeper cultural differences underlying the respective legal systems and institutions, including the different mentalities behind property law in common law and civil law systems.

Having gained a more general understanding of the source and target legal systems and their relevant fragments, the translator may go on to the microcomparative level and try to establish the meaning of the source legal term. Since it is not defined in the Civil Code, court jurisprudence may be consulted for this purpose. For instance, as noted by the Polish Supreme Court[122], the term in question refers to stable possession, lasting for a long time but not enough for acquisitive prescription. However, the time is enough for it to be incompatible with the principles of social coexistence to deprive the current possessor of possession of a strip of land by fixing the boundary. *Ostatni spokojny stan posiadania* is thus a question of established, undoubted possession that is peaceful in the factual rather than legal sense, without any changes or disturbances in its course.

Next, using the functional method, the translator may try to find out what the criteria for resolving boundary disputes in the target system are (not necessarily whether there is a concept with a similar function in the target system). In this way, the translator learns that although the respective procedures for resolving boundary disputes do not differ dramatically, a condition equivalent to *ostatni spokojny stan posiadania* is not applied in English law. On the contrary, it turns out that English courts primarily try to construe the original act of conveyance[123]. Again, this observation required going beyond dictionaries or glossaries and consulting some English legal sources like cases or reputable online material, e.g. some legal blogs, which are more accessible. In addition, the hermeneutical method helps the translator understand that the generally equivalent procedures may involve quite different approaches. This should alert the translator to a greater risk of incomprehensibility of the target text to the English audience, given that it refers to a category unfamiliar to them. It should also encourage a careful choice of a sufficiently communicative translation equivalent.

In the present case, due to the lack of an equivalent concept in the target system, the translator cannot use a natural (functional or structural) equivalent. An alternative could be a descriptive paraphrase, whose elements should be tested in native English resources for comprehensibility and any misleading connotations. Such a check shows, for instance, that 'the last peaceful enjoyment of possession', a term used in one of the existing translations presented in Table 1, may lead to incorrect associations with the European Convention on Human Rights[124]. Moreover, a simple Google search demonstrates that the expression 'state of possession', used by another translator, is rather uncommon on UK websites[125], which puts into question its intelligibility. Finally, the third translator's choice, 'the last peaceful possession', fails to communicate what possession actually means here, i.e. that the source term refers to a period of holding land or a state of holding land continuing over time.

Based on the above analysis, one may propose the following translation equivalents: 'last/most recent period of peaceful possession' or 'last/most recent state of peaceful possession', the latter being more source-language-oriented. Notably, despite the conceptual differences between the Polish and English institutions of possession, the word 'possession' is acceptable in such an equivalent. The results of the

[122] Supreme Court, Apr. 27, 2018, IV CSK 210/17, LEX.
[123] See Mummery LJ in Pennock v. Hodgson [2010] EWCA (Civ) 873; Alan Wibberley Building Ltd v. Insley [1999] UKHL 15; https://www.summitlawllp.co.uk/legal-guide-to-boundary-disputes-and-land-disputes/.
[124] See the term 'peaceful enjoyment of possession' used in its context at https://www.compactlaw.co.uk/pages/human-rights-act-1998-how-it-relates-to-property-and-housing.
[125] https://cli.re/1nREQ2.

analysis, including the verification of the existing translations, are shown in Table 2 below.

Source term	Translation 1 (LEX)	Translation 2 (Legalis)	Translation 3 (Legalis)	Proposed translation equivalents
ostatni spokojny stan posiadania	~~last peaceful enjoyment of possession~~	~~last peaceful state of possession~~	~~last peaceful possession~~	last period of peaceful possession; most recent period of peaceful possession; last state of peaceful possession; most recent state of peaceful possession

Table 2: Results of translational comparative legal analysis for the term 'ostatni spokojny stan posiadania'.

As can be seen, translational comparative legal analysis for the term *ostatni spokojny stan posiadania* has followed a five-step model consisting of macrocomparative analysis, mesocomparative analysis, microcomparative analysis, terminological analysis and a decision on the translation equivalent (see Figure 1). The detailed course of such analysis could, of course, vary, as each translator is free to use particular methods and resources according to what he or she thinks is best given their experience, knowledge, the translation brief and external circumstances.

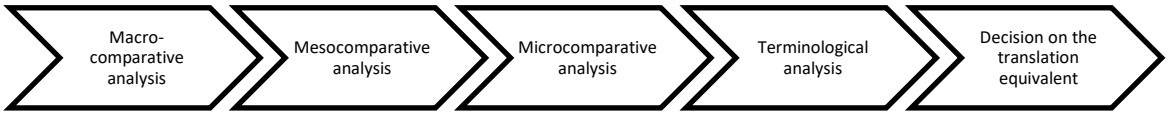

Figure 1: A model of translational comparative legal analysis[126].

Obviously, an analysis like this does not meet the rigorous standards of actual comparative law research, and it is not intended to do so. There is no time for scientific research in practical translation work. Moreover, the analysis is, to a large extent, terminology-focused and oriented towards the goal of legal translation, i.e. conveying the legal sense between the source and target terms. It thus combines elements of comparative law methodology, linguistic methods and translation methods and techniques. In this way, it leads to a rather reliable translation decision based on legal and linguistic arguments. While it is still rather time-consuming (compared to a simple online search, e.g. on a forum or in a dictionary), the translator may decide to use the procedure proposed in the case of more challenging terms or modify it according to the circumstances.

6 Conclusions

The brief analysis presented in this paper shows that comparative law methods are potentially suitable for adaptation for the purposes of legal translation and that there are many elements of these methods that legal translation can exploit. Some ideas for such adaptations were discussed in Section 4. The actual usefulness of comparative law methods has not been addressed in the present paper, except for one practical example in Section 5. However, the framework proposed has, to some extent, been analysed and verified based on the Polish-English pair in the author's earlier research. It included a case study concerning a term in the field of environmental law (published in English)[127], and the author's PhD thesis (published in Polish), covering a much broader collection of terms in the field of property law[128]. It is hoped that this paper and the earlier research will encourage LTS scholars familiar with other language combinations to explore the usefulness of the framework proposed based on different

[126] P. KUSIK, *Legal Transplants and Legal Translation: A Case Study of the Borrowing of the U.S. Limited Liability Partnership into the Polish Legal System*, in *Perspectives*, 2024, p. 6; P. KUSIK, *Zastosowanie metod prawnoporównawczych w procesie tłumaczenia na przykładzie polsko-angielskiego przekładu terminologii z zakresu prawa rzeczowego*, cit., p. 461.

[127] P. KUSIK, *The Right to the Environment? Article 4(1) of the Polish Environmental Protection Law Act from a Combined Comparative Law and Polish-English Legal Translation* Perspective, cit., pp. 195–221.

[128] P. KUSIK, *Zastosowanie metod prawnoporównawczych w procesie tłumaczenia na przykładzie polsko-angielskiego przekładu terminologii z zakresu prawa rzeczowego*, cit.

examples, including a variety of assignments legal translators face. It is also submitted that simplistic references to links between legal translation and comparative law should be replaced with an in-depth study of particular elements of comparative law theory and methodology juxtaposed with the tenets of legal translation.

Uwe Kischel – to wit, a comparatist – aptly notes that although comparative law is helpful in the translation process, solving translation problems "remains the translator's task"[129]. Dullion is also right in stating that comparative law can only serve as a basis for making translation decisions according to pragmatic criteria, but it does not provide ready-made terminological choices[130]. It should thus be emphasised that the comparative law methods presented in this paper are not a substitute for legal translation's own methodology, although they may be complementary to it. As a result of their adaptation, they lose the nature of scientific research methods and become methods in the praxeological sense that support practical translation activity. Indeed, legal translation, as a branch of specialised translation, is of a utilitarian nature[131].

In the legal translation process, the purpose of these methods also changes. They become focused on finding potential natural equivalents[132] and determining their acceptability[133] or on formulating other types of equivalents, more or less oriented towards the source language[134]. In particular, the criteria for assessing differences and similarities between elements of legal reality may differ between translators and comparatists. A difference between certain legal institutions important for a comparatist will not necessarily be decisive when it comes to the translator's decision to use or reject a particular translation equivalent. The translator takes into account the goal of legal translation, i.e. conveying the legal sense, as well as the entire multidimensional communicative situation of legal translation, usefully presented by Kierzkowska in the model of 'Skopos on the discourse disc'[135]. In order to clearly distinguish the use of adapted comparative law methods for legal translation purposes from actual comparative law research, this paper proposes to designate the former as 'translational comparative legal analysis'.

It should also be acknowledged that translational comparative legal analysis, while providing solid grounds for translation decisions, may be time-consuming[136]. Hence, faced with practical constraints, the translator is likely to use it for the investigation of more challenging terms, e.g. those he or she does not already know from his or her education or practice, those for which established equivalents do not exist, those that are not available in reliable reference books or other resources for translators (including tools prepared based on comparative law research[137]), etc. The text type may also matter since the analysis is likely to be more efficient if a particular text consists of terminology related to the same area of law, making it possible to investigate several terms together[138]. The exact course of such analysis is likely to differ depending on the proximity of legal systems, recognised as a factor that has an impact on the difficulty of legal translation[139]. Finally, translational comparative legal analysis is clearly applicable to intersystemic legal translation. It may potentially prove useful in hybrid contexts, but it will rather be inapplicable in the case of unijural systems using two languages (intrasystemic

[129] U. KISCHEL, *op. cit.*, p. 12.
[130] V. DULLION, *op. cit.*, p. 99.
[131] T. TOMASZKIEWICZ, *Proces przekładu: fazy i elementy składowe*, in A. PISARSKA, T. TOMASZKIEWICZ, *Współczesne tendencje przekładoznawcze*, Poznań, 1996, pp. 182–183.
[132] D. KIERZKOWSKA, *Tłumaczenie prawnicze*, Warszawa, 2002, pp. 118–119.
[133] S. ŠARČEVIĆ, *op. cit.*, pp. 241–249.
[134] S. ŠARČEVIĆ, *op. cit.*, pp. 250–263.
[135] D. KIERZKOWSKA, *op. cit.*, Warszawa, 2002, pp. 72–76.
[136] See e.g. S. ŠARČEVIĆ, *op. cit.*, p. 237.
[137] See 'the translation-oriented terminological entry' discussed in C. BESTUÉ, *A Matter of Justice: Integrating Comparative Law Methods into the Decision-making Process in Legal Translation*, in Ł. BIEL, J. ENGBERG, M. R. MARTÍN RUANO, V. SOSONI (eds.), *Research Methods in Legal Translation and Interpreting*, London, 2019, pp. 138–144.
[138] P. KUSIK, *Zastosowanie metod prawnoporównawczych w procesie tłumaczenia na przykładzie polsko-angielskiego przekładu terminologii z zakresu prawa rzeczowego*, cit., pp. 437, 439–440
[139] R. DE GROOT, *The Point of View of a Comparative Lawyer*, in *Les Cahiers de droit*, vol. 28, no. 4, 1987, pp. 798–800.

translation)[140]. Overall, the use of translational comparative legal analysis calls for flexibility that takes into account the context of a particular translation assignment.

It is worth emphasising that the schemes of intelligibility on which particular comparative law methods are based do not have to work independently and can be combined in many different ways[141]. Similarly, translational comparative legal analysis can potentially involve the combined application of different elements of comparative law methods in a way that is tailored to legal translation purposes. Coming back to the metaphor of a comparatist's 'pluralist toolbox'[142], it would be advisable for legal translators and LTS scholars to borrow comparative law tools from comparatists to a greater extent than before, seeking further possibilities of their adaptation for legal translation. This may also encourage the introduction of elements of comparative law methodology into legal translators' education to broaden their horizons with a comparative law perspective.

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[140] See Ł. BIEL, *Researching Legal Translation: A Multi-perspective and Mixed-method Framework for Legal Translation*, in *Revista de Llengua i Dret, Journal of Language and Law*, no. 68, 2017, p. 78.
[141] G. SAMUEL, *op. cit.*, p. 84.
[142] M. VAN HOECKE, *op. cit.*, pp. 28–29.

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European States and Status of State Languages De Jure and De Facto

Barbora Tomečková[1]

Abstract: This article deals with the issue of understanding the term 'state language' through the lens of the relationship between the concepts De Jure and De Facto. Based on their possible relationship which occurred at the constitutional level and practice of European states, I created four groups (De Jure and De Facto are the same, non De Jure but De Facto, transition group, and special cases of De Jure and De Facto). By using these four groups, I was able to categorize a research sample consisting of 42 European countries. This not only managed to portray the linguistic situation regarding state languages in Europe but also offered one of the supporting options for determining, within the framework of official language designation and language planning, which of the dominant languages in a country could truly be the state language. The main output of this article is thus a table that divides the 42 states into these four groups, containing data on the state language and its constitutional status for each state.

Keywords: State language, De Jure, De Facto, Europe, Constitutions.

1. Introduction

After reading several constitutions, regardless of whether they are constitutions of European states or from other continents, the researcher encounters a discrepancy between the status definitions of the dominant languages in the state. Although there are no general rules yet on how to properly conceptualize an official language in such a way to be able to generalize about the roles that dominant languages may have in a state, it is possible to attempt to determine the status of a state language through official language designation.

As part of the official language designation[2], it is crucial to clarify how the status of the state language emerged within the framework of status planning[3]. In the practice of European states, we can encounter situations where states choose to include provisions for a state language in their constitution, as well as situations where states decide that there is no necessity for one of the privileged languages to be elevated to a constitutional level. However, this does not imply that such a state does not have a status-defined state language. When there is no provision for the status of a privileged language, we must examine the language in which the constitution is written. The state language of a given state thus becomes the language in which that state's constitution is composed. Therefore, the language does not gain its status merely by being constitutionally elevated by a provision (i.e., De Jure), but also because the constitution is written in that language (i.e., De Facto).

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[2] Term introduced in publication S. CHOUDHRY, E. HOULIHAN, *Official Language Designation: Constitution-Building Primer 20*, Strömsborg, 2021.

[3] See more, for example, R. L. COOPER, *Language Planning and Social Change*, Cambridge, 1989, p. 183.; or G. FERGUSON, *Language Planning and Education*, Edinburgh, 2006, p. 33.

However, the theory as conceived does not seem to encompass all possible situations that arise within the European context in this article. The first issue is the use of the terms De Jure and De Facto. When considering the theoretical framework, it is somewhat challenging to conceptualize the terms De Jure and De Facto. According to one point of view, these two concepts form strict opposites.[4] According to another perspective, it is possible to have situations that are De Facto, which may eventually become De Jure over time.[5] Because of this, I adopt in this article a pragmatic approach: De Jure and De Facto situations actually can be the same, if the legal designation and practical usage coincide. Separately, the term De Jure means that the state language is explicitly enriched in the constitution in a particular provision (for example Slovak Constitution and art. 6), and De Facto, where the status of the state language derives from the fact that the constitution is written in that language (for example, the Czech Constitution).

The second fundamental problem is that this framework is not easily applicable to countries with constitutions (or laws or international treaties representing the constitution) that are polylegal,[6] with each written in a different language. This complexity often arises from the historical context of the first documents, which reflected the linguistic and demographic distribution of the time. Due to the variety of languages, the question arises: Which language of which law is actually the state language?

At the same time, the lack of a clear conceptualization of the official language, and the ability to distinguish between the different statuses of privileged languages within the constitution or those in which the constitution is written is also evident here. This means that in certain cases, even when the constitution is written in a specific language (both in instances where other laws are part of the polylegal constitutional order, and in the inclusion of other authentic language versions of the same constitution),it remains unclear whether the language in question can be considered as a state language, especially if the language law of the country or the constitution itself imposes limitations on that language. I have thus decided that if the use of a language is restricted (either territorially or substantively) by a specific law, it cannot be considered a state language.

In my article, I would thus like to address the issue of the concepts of De Jure and De Facto applied to the understanding of the term ‘state language’ comprehensively. The main question of my article is: What is the De Jure and De Facto situation regarding state languages in Europe? The article aims to classify a research sample consisting of selected European states according to the relationship between De Jure and De Facto state language, but also to provide one of the insights into how to determine which language is directly the state language. In the work, which has a doctrinal and normative character, several methods are used – through observation, analysis, examination, interpretation and, above all, comparison - which will be further explained in the methodological chapter.

2. Methodology

2.1 Research sample

The research sample for determining the relationship between De Facto and De Jure consists of a total of 42 European states. In general, countries that do not have their entire main territory in Europe and states that are not sovereign and independent were not included in this sample. Specifically, the sample also does not include the Vatican due to its legal system and Ukraine, where the current political situation makes it more difficult to monitor the status, which can change from day to day, possibly affecting the timeliness of the data and the relevance of the research.

2.2 Roadmap of research

[4] *De Facto*, Encyclopædia Britannica Online, https://www.britannica.com/topic/de-facto.
[5] *UPSC Difference Between – De Facto and De Jure*, Unacademy, https://unacademy.com/content/upsc/difference-between/de-facto-and-de-jure/.
[6] ‘Polylegal’ means that the constitutional order is not created by just one document, the Constitution, but by several such constitutional laws, as is the case in the Czech Republic. See more D. HENDRYCH, et al., *Právnický slovník*, 3rd ed., Prague, 2009.

The process of working with the sample is as follows. First, the constitutions or legal texts that represent the constitutions were identified in official gazettes. I then focused on the languages in which the constitution is written (and published in the official gazette), and on the provisions that concern state languages. These provisions were later examined and interpreted. In this step, other sources for interpretation were also searched for, such as commentaries on the constitutions or other laws regulating the use of languages in the state. At the same time, information from the official gazette on authentic versions was collected. In case of uncertainty (which happened to be in the case of North Macedonia), I contacted a colleague from the university who deals with the issue of the status of the language in his country. I then compared the situation stated in the provision of the constitution with the actual situation, i.e. in what language the constitutions were written for each country of the research sample.

2.3 Results

Based on the comparison, I created a set of four groups that illustrate possible relationships between the De Jure and De Facto state language in each country. Each of these groups, which will be introduced in the following chapters, is accompanied by explanatory comments and, if needed, their possible relationships. The commented groups are then followed by a chapter consisting of tables which contain information about the constitution (or in the legal texts that constitute the constitution) and state languages of all 42 countries in the research sample, while being divided and categorized according to those four groupings.

3. Creating the groups

3.1 De Jure and De Facto are the same

The first group that could be discerned in the relationship between De Jure and De Facto in the practice of European states is that the two concepts coincide with each other. This means that there are states that have chosen the status of a state language or languages in their constitution and at the same time the constitution is also written in that national language (in the case of multiple national languages, there are language versions in all these languages, and they are understood as authentic language versions, not just translations)[7].

An example could be Slovak Republic, which states in Article 6 that the state language is Slovak and is also written in Slovak, or Portugal, which constitutionally elevates the status of Portuguese and the whole Constitution is also written in this language.

As far as the multi-language states are concerned, for example, the Republic of Ireland recognises both Irish and English as its state languages, and there are two authentic language versions of its Constitution, one in Irish and the other in English. The only difference is that in the event of a conflict of interpretation, the Irish version takes precedence. In this group we thus also encounter states trying to promote, in the process of linguistic revitalization, indigenous language which holds a strong symbolic value. [8]

[7] The main difference between authentic language version and translation is, that translations are in most cases not legally binding. The European Union uses the same practice. The principle of equal authenticity (also called principle of language equality) applies here, when language versions of EU Law (written in all "*official languages*" given by Regulation No. 1) are equally authentic and have the same meaning. On top of that conclusion of 13 June 2005 *on the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union* was issued by Council of EU, based on which use of other, additional languages (even if certified translation is made in that language) is not and authentic version and therefore not legally binding. See more: E. MIŠĆENIĆ, *Legal Translation vs. Legal Certainty in EU Law*, in E. MIŠĆENIĆ, A. RACCAH (eds.), *Legal Risks in EU Law: Interdisciplinary Studies on Legal Risk Management and Better Regulation in Europe*, Cham, 2016, p. 90.; or *Legal Aspects of EU Multilingualism*. European Parliament (2017), p. 5, https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/595914/EPRS_BRI%282017%29595914_EN.pdf.

[8] E. SHOHAMY, *Language Policy: Hidden agendas and new approaches,* London, New York, 2006, p. 61.

Even in the case of Switzerland, there are authentic language versions of the Constitution in all three main languages (German, Italian and French). When it comes to Rhaeto-Romance, since the usage is limited by the Swiss Constitution itself, the language cannot be perceived as a state language. This is also confirmed by the note in the Rhaeto-Romance translation of the Swiss Constitution that this version is only informative and not legally binding.[9] This proper distinction between statuses could be seen as a manifestation of careful management of language hierarchy in its own constitution.[10]

Generally, in all states in this group, enshrining the language into the constitution, which are De Jure and De Facto same state language(s), strengthens the legal status[11] of these languages and, in most cases, creates an easier operational space for governance.[12] Also adding in the constitution language(s), which is/are really used, and the constitution is even written in this language(s) as an authentic version, reflects the link between language and the nations in the states. That also helps to amplify the cultural legitimacy[13] and actual unity in the eyes of their own citizens.[14]

3.2 Non De Jure but De Facto

Typical for this group are states where the language is not directly enshrined in the constitution, but where the status of the state language can be traced back to the language of the constitution of the particular state.

This group include, for example, the Czech Republic. The Czech Constitution does not regulate the status of any privileged language in any way. Nevertheless, we know that the state language of the Czech Republic is Czech, because the Czech Constitution and The Charter of Fundamental Rights and Freedoms are written in the Czech language (i.e. De Facto). Another European example is Germany, which also does not have De Jure state language in its Grundgesetz, but the state language is German, because the law is written in that language.

In case of all the states in this group, we can encounter diverse background for choosing only De Facto state language. Mainly, it could be connected with the historical continuity, which could also be connected with the assumption of relative homogeneity[15] rooted in a strong ethno-linguistic identity.[16] On the other hand, as in the case of Germany, there is also a reflection of constitutional minimalism[17], which here relates to a post-authoritarian democratic framework. The state precisely avoids constitutionally designated language, as part of distancing from its ethno-nationalist past.[18] Another reason could be the absence of a disputed societal status, which made it unnecessary to designate the state language formally.

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[9] For example, we can find the note on legal binding at the beginning of the Swiz Constitution in Rhaeto-Romance. Original of the note: „*Rumantsch è ina lingua naziunala, ma ina lingua parzialmain uffiziala da la Confederaziun, numnadamain en la correspundenza cun persunas da lingua rumantscha. La translaziun d'in decret federal serva a l'infurmaziun, n'ha dentant nagina validitad legala.*" Translation: "*Rhaeto-Romance is a national language, but a partly official language of the federal government, i.e. in correspondence with Rhaeto-Romance speakers. The translation of a federal decree is for information purposes but has no legal validity." Constituziun federala da la Confederaziun svizra...* Fedlex, https://www.fedlex.admin.ch/eli/cc/1999/404/rm.

[10] F. GRIN, *Language Policy Evaluation and the European Charter for Regional or Minority Languages*, Houndmills, Basingstoke, Hampshire, 2003, p. 87.

[11] S. MAY, *Language and Minority Rights: Ethnicity, Nationalism, and the Politics of Language,* New York, London, 2012, p. 5 and p. 145.

[12] J. C. MAHER, *Multilingualism: A Very Short Introduction*, Oxford, 2017, p. 74.

[13] K. A. WOOLARD, *Language variation and cultural hegemony: toward an integration of sociolinguistic and social theory*, in *American Ethnologist,* 12(4), 1985, p. 739.

[14] A. KOGABAYEVA, A. KURMANALIEVA, P. CATTERALL, S. KAUPENBAEVA, *About the Role of Language in the Formation of National Unity*, in *Journal of Philosophy Culture and Political Science*, 91(1), 2025, p. 65.

[15] see e.g. G. EXTRA, D. GORTER (eds.), *Multilingual Europe: Facts and Policies*, Berlin, New York, 2008, p. 185.

[16] S. WRIGHT, *Community and Communication: The role of language in nation state building and European integration*, Clevedon, Buffalo, Toronto, Sydney, 2000, p. 15.

[17] See e.g. W. KYMLICKA, A. PATTEN (eds.), *Language Rights and Political Theory*, Oxford, 2003, p. 50.

[18] S. WRIGHT, *op. cit*., p. 45.

Also, all the European states which belong to this group are constitutionally monolingual, and although there is no state language declared in the constitution, it does not intuitively point out possible linguistic diversity at first sight. Despite being partially more flexible than the previous group, it can face clarity issues[19] or make the future multilingual reforms (which could be caused, for example, by many types of migration or the rise of minorities) more difficult.[20]

3.3 Transition group

This group includes two types of situations. First, situations where De Jure and De Facto language do not coincide, because the constitution granted the status of a state language to a language other than the one in which it is written, and second, situations where De Facto state language of the whole constitution changed to another one.

In the case of the first situation, we can name as an example Moldova, which until recently had the Moldovan language as its state language. However, there are disputes over the existence[21], and its inclusion in the Constitution was intended to serve as an expression of the national identity of the Moldovans. The Constitution was written in Romanian. Today, the Moldavian Constitution states that Romanian is the state language.

For the second situation, we can name Montenegro and Norway. In Montenegro, the De Jure state language is Montenegrin, but the codification ended after the latest Montenegrin Constitution became effective. During the years before the end of codification, the state language was De Jure Serbian as stated in the pre-amended version.[22] In the case of Norway, after the Norwegian language was codified, the Constitution was translated from Danish into the new language (more accurately into its two standards), and it is the only authentic language version in Norway.[23]

As of the second half of 2024 (when this research was created), this group can only be viewed as a transition group for two reasons. The first reason is that there has been a certain development of the language situation. In the case of Montenegro, it was possible to codify Montenegrin, and it is now truly the state language both De Facto and De Jure. In the case of Norway, it was possible to codify the current form of Norwegian, and the Constitution, although its wording did not change in content, was rewritten in this language.

The second reason is the change in provisions in the constitution. This is an example of Moldova, when, despite the challenge of the amendment at the Constitutional Court, there was a change not only in the Constitution, but also in other laws and the nomenclature 'Moldovan language' was replaced by 'Romanian language'.

It is also important to note that, since this group is a transition group, currently the three mentioned countries here thus overcome this discrepancy between De Jure and De Facto and can be classified into the two previous groups.

This group also mainly demonstrate how the process of setting language policy could be a sensitive process amplified by the issue of language symbolism entangled with political will,[24] especially in Montenegro and Moldavia. The case of Montenegro reflects a historic period of the nation-building process and identity formation, in which the linguistic reality was pushed to the background to prioritise

[19] F. GRIN, *op. cit.,* p. 16.
[20] See e.g. M. BARNI, G. EXTRA, *Mapping Linguistic Diversity in Multicultural Contexts,* Berlin, New York, 2008, p. 217 or p. 295.
[21] T. J. HEGARTY, *The Politics of Language in Moldova*, in C. C. O'REILLY (eds.), *Language, Ethnicity and the State*, London, 2001, p. 134. https://doi.org/10.1057/9781403914187_6
[22] Council of Europe, Venice Commission, *Opinion on the Protection of Human Rights in Emergency Situations*, CDL-AD(2006)015, Strasbourg (4 April 2006), https://www.venice.coe.int/webforms/documents/?pdf=CDL(2005)096-e.
[23] T. BULL. *The two Norwegian official written standards, Bokmål and Nynorsk. Linguistic and ideological implications on national bilingualism and biliteracy,* Journal.fi, p. 4. https://journal.fi/afinlavk/article/view/79335/47252
[24] B. SPOLSKY, *Language Policy,* Cambridge, 2004. p. 26.

a symbolic, constitutionally set language policy.[25] When it comes to Moldova, the previous choice of the Moldovan language was more a tool for national differentiation at the political level.[26] In both states, the process thus reflects efforts to affirm or construct the national identity. However, such a transition is also connected with negative implications, such as the ignition of internal controversy in the case of overlapping (linguistic) identities like Montenegrin vs. Serbian in Montenegro[27] or the creation of confusion in education or public administration.

On the other hand, the situation in Norway was much calmer than in the other states in this group. The transition from the Danish to the Norwegian language was a slow and long process (beginning after independence from Denmark in 1814 and taking around two centuries), which was not undermined by such radical ruptures.[28]

3.4 Special cases of De Jure and De Facto

The last group deals with special cases of the relationship between De Jure and De Facto state language, where the relationship between these two concepts cannot be thus easily resolved as in the case of previous groups due to legal, historical or structural ambiguities.

Firstly, this group includes those states for which, because of their polylegal constitution, it is not possible to simply determine what the state language is. The De Jure rule cannot be applied, since it is not mentioned in any of the laws, but neither can the De Facto rule, since the laws constituting the constitution are written in multiple languages. For example, in the case of San Marino, the first laws or texts constituting the constitution were written in Latin, but others have been written in Italian. It is therefore necessary to look into the language laws of language practice of the country.

Secondly, it is also necessary to look into the language laws for countries that have a constitution published in the official gazette in several languages, which are all recognised by the constitution. The problem is caused by the lack of conceptualization of official language and the non-differentiation of status between languages. It cannot be said that all the languages in which the constitution is written are official languages, because the language law (or the constitution itself) restricts one (or more) languages either according to the place of use or according to the areas for which it is used. An example of this problem can be seen in North Macedonia, where the Constitution declares Macedonian and Albanian as official languages and, at the same time, the country has published the Constitution in both languages as authentic versions in the official gazette. However, the Albanian language is also restricted in the Constitution and is thus not a state language.[29] I also include in this problem case of Bosnia and Herzegovina, where one of the annexes of The General Framework Agreement for Peace in Bosnia and Herzegovina from 1995 makes the Constitution of that State. This agreement was written in a total of 4 languages - Bosnian, Serbian, Croatian and English.[30] The first three languages reflect the demographic and linguistic distribution of the state, where they are also considered privileged languages. Whereas

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[25] R. BUGARSKI, *Language, identity and borders in the former Serbo-Croatian area*, in *Journal of Multilingual and Multicultural Development*, 33(3), 2012, p. 231.
[26] C. KING. *The Moldovans: Romania, Russia, and the Politics of Culture*, California, 2000, p. 77.
[27] N. CASPERSEN, *Elite Interests and the Serbian-Montenegrin Conflict*, in *Southeast European Politics*, IV(2-3), 2003, p. 118.
[28] E. H., JAHR. *Language Planning as a Sociolinguistics Experience: The Case of Modern Norwegian*, Edinburgh, 2014, p. XI.
[29] The role of the Albanian language in North Macedonia is still a question, especially after the Law on Use of Languages, which expands the use of the language beyond the boundaries of the constitution. For this reason, the Constitutional Court of North Macedonia has been trying for several years to determine whether the law is unconstitutional or not. See S. STOJADINOVIC, *The Law on Use of Languages in Republic of (North) Macedonia: An example of over-passing of the international standards and breaking the Constitution in political interests*, in *International Journal of Global Community*, 3(3), 2020, p. 189, https://doi.org/10.33473/ijgc-ri.v3i3%20-%20Nov.76
[30] *The General Framework Agreement for Peace in Bosnia and Herzegovina*, OSCE, p. 1. https://www.osce.org/files/f/documents/e/0/126173.pdf.

English only had a diplomatic function and interpreting it as the state language would be an argumentum ad absurdum.

Lastly, this group also includes the case of an unwritten constitution, where again, due to the absence of a text, it is not possible to determine the De Jure language of the state, nor the De Facto language in which it would be written. The linguistic situation of the country must be taken into account here. It concerns the United Kingdom, from whose language situation we know that the privileged language throughout the territory is English.

All the states in this group imply the importance of legal cohesion when it comes to language policy in the state. They underline the need to understand the broader political, sociological and historical context to properly conduct such analysis. These states also highlight how the mentioned three types of constitutional arrangements could be complicated also among other language designations.

In the group, we can also encounter the fragility of language policy, which could be manifested in different ways. For example, in Bosnia and Herzegovina, the language policy relies on ethnic compromise[31] or in the case of the UK, where the lack of a constitution and constitutionally elevated language(s) limits legal clarity of language statutes over the state.[32] Also, it is not rare to find serious problems with different interpretations of the language versions of laws.[33]

4. De Jure and De Facto state language of the research sample

All of the groups and their relationship could be illustrated by this picture:

[31] F. BIEBER, *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*, Houndmills, Basingstoke, Hampshire, 2006, p. 177.
[32] W. RODDICK, *One Nation – Two Voices? The Welsh Language in the Governance of Wales*, in C. H. WILLIAMS (ed.), *Language and Governance*, Cardiff, 2007, p. 263.
[33] *The Decision on the Promulgation of the Constitution of the Republic of Montenegro*, Venice Commission, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)014-e.

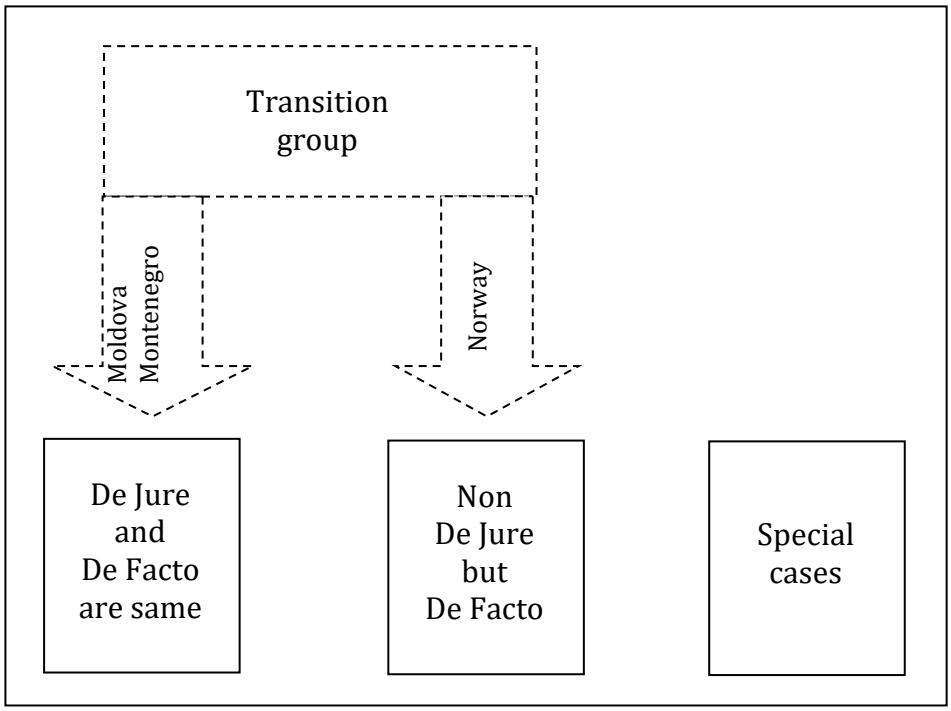

Figure 1: Representation of the groups divided according to the relationship between De Jure and De Facto state language with the inclusion of states from the Transition group

Next to the illustration of the relationships, this subchapter includes the results of the analysis of selected European countries and their constitutional enshrining of the state language according to the relations between De Jure and De Facto. The results are presented in a total of three tables.

The first table focuses on states where the situation of De Jure and De Facto regarding the state language is the same. Thus, the table captures the state, the exact provision in the constitution, and the language(s) that can be considered state languages. For selected states, where necessary, an additional or explanatory note is provided in the 'Language(s)' column.

The second table shows those states where the language is not mentioned in the constitution (or the laws/agreements/document representing the constitution), but it is possible to identify the state language, because the law is written in that language. The table thus shows the state, the concrete law and language(s), which could be consider state language. Again, for selected states, an additional or explanatory note is provided in the 'Language(s)' column, if necessary.

The last table focuses on special cases of the De Jure and De Facto relationship. Thus, the table captures the state, the law or constitutional provision, and the languages that may be considered as state languages. Because this table is based on exceptions, a line is added to each state to explain the issue.

De Jure and De Facto are same		
State	**Provision**	**Language(s)**
Albania	Article 8 of Constitution	Albanian
Andorra	Article 13 of Constitution	Catalonian
Belorussian	Article 17 of Constitution	Belorussian, Russian
Bulgarian	Article 3 of Constitution	Bulgarian
Montenegro	Article 13 of Constitution	Montenegrin (Before that, the state belonged to the transition group, because the language in which it is now written is different from the one mentioned in the pre-amendment version. Now, despite possible linguistic controversies, Montenegrin is the state language.)
Estonia	Article 6 of Constitution	Estonian
Finland	Article 17 of Constitution	Finish, Swedish
France	Article 2 of Constitution	French
Croatia	Article 12 of Constitution	Croatian

De Jure and De Facto are same		
Republic of Ireland	Article 8 of Constitution	Irish, English (Both authentic language versions are legally binding. Contrary according to Article 25, para. 4.6 and, para. 5.4 of the Constitution, in case of interpretative ambiguities of the Constitution, the Irish version has priority.)
Liechtenstein	Article 6 of Constitution	German
Lithuania	Article 14 of Constitution	Lithuanian
Latvia	Article 4 of Constitution	Latvian
Hungary	Article H of Constitution	Hungarian
Luxembourg	Article 29 of Constitution	French (The Luxembourg Constitution also recognises German and Luxembourgish languages. The Constitution itself, on the other hand, has just one legally binding version, which is French. It also follows from the law that French is used in all areas, whereas German and Luxembourgish are restricted to just some activities.)
Malta	Article 5 of Constitution	English, Maltese

De Jure and De Facto are same		
Moldavia	Article 13 of Constitution	Romanian (Recently, the Constitution was amended and now uses the Romanian language instead of the Moldavian language.[34])
Monaco	Article 8 of Constitution	French
Poland	Article 27 of Constitution	Polish
Portugal	Article 11 of Constitution	Portugal
Austria	Article 8 of Constitution	German
Romanian	Article 13 of Constitution	Romanian
Slovakia	Article 6 of Constitution	Slovakian
Slovenia	Article 11 of Constitution	Slovenian (The Slovenian Constitution also recognizes in the same Article Italian and Hungarian, but only in the autochthonous areas of these minorities. Thus, both languages are restricted territorially. What is more, the Slovenian Constitution has only one – Slovenian - authentic language version.)
Serbia	Article 10 of Constitution	Serbian
Spain	Article 3 of Constitution	Spanish

[34] The issue of changing this language started in 2013, when the Moldovan Constitutional Court in Judgment No. 36 of 2013 said, that the Declaration of Independence, in which the Romanian language was elevated, represents "[…] *the national conscience and defines 'the constitutional identity' of the Republic of Moldova*". Despite the Constitutional Court's judgement, the Moldovan constitution elevated the nomenclature 'Moldovan language based on Latin Alphabet'. After ten years, the law No. 52 of March 16, 2023, *On the implementation of considerations of some rulings of the Constitutional Court* was adopted. By this law, all the nomenclature 'Moldovan language' has to be changed to 'Romanian language'.

De Jure and De Facto are same		
Switzerland	Article 4 of Constitution	German, Italian, French (As I stated above, only the language versions of these three languages are legally binding. The Rhaeto-Romance version is for informational purposes only.)

Non De Jure but De Facto		
State	**Law**	**Language(s)**
Czechia	Constitution, The Charter of Fundamental Rights and Freedoms	Czech
Denmark	Constitution	Danish
Germany	Grundgesetz	German
The Netherlands	Constitution	Dutch
Norway	Constitution	Norwegian (Norwegian language is a polycentric language with two written standards - Bokmål and Nynorsk. From 16 May 2014, the Norway Constitution has been written in both standards. Earlier, before the Norwegian language was codified, the Constitution was written in "[…] *antiquated form of Danish*")[35]
Iceland	Constitution	Icelandic
Italy	Constitution	Italian
Greece	Constitution	Greek
Sweden	Four Basic Laws of Sweden: Instrument of Government, Freedom of the Press Act, Fundamental Law of Freedom of Expression, Act of Succession	Swedish

[35] W. B. WARNER, E. HOLMØYVIK, M. RINGVEJ, *The Thing That Invented Norway*, in K. GAMMELGAARD, E. HOLMØYVIK (eds.), *Writing Democracy: The Norwegian Constitution, 1814–2014*, New York, Oxford, 2015, p. 40.

Special cases of De Jure and De Facto		
State	**Legal regulation**	**Language(s)**
Bosnia and Herzegovina	Annex 4 of The General Framework Agreement for Peace in Bosnia and Herzegovina[36]	Bosnian, Croatian, Serbian
The Agreement was also drawn up in English, but that language cannot be seen as state language hence its role was diplomatic.		
Belgium	Constitution	French, Dutch
Belgium is truly exceptional in Europe in terms of its language situation and provisions for state languages. The Constitution itself does not determine what the state languages of the country are. However, in Article 4, the Constitution divides the country into four language regions: the Dutch-speaking region, the French-speaking region, the bilingual region of Brussels-Capital and the German-speaking region. On this basis, it can be concluded that the privileged languages will be French, Dutch and German. As for the authentic versions of the Constitution, it was originally written in French. In 1967, a Dutch version[37] , and later in 1991, German versions were created.[38] Thus, there are three versions in such languages, which logically correlate with the linguistic distribution of the regions in Brussels. The problem is that German is not sufficiently elevated in Belgium, like the other two languages. So German is limited to civil service, judicial proceedings in court, and education.[39]		
Kosovo	Article 5 of Constitution	Albanian, Serbian
The Kosovan Constitution also recognized at the municipal level as 'official languages' Turkish, Bosnian and Roma language. Here we can encounter how a lack of conceptualization of official language causes huge interpretative troubles inside the country. In the official gazette of Kosovo, we are able to find authentic language versions of the Constitution in Albanian, Serbian, Turkish, Bosnian (and English for historical and political reasons, and it is not an official language).[40] On the other, at the website of Ministry of Local Government Administration, we can only find two authentic language versions – Albanian and Serbian (plus, again, English)- with the note, that if there are discrepancies amongst the language version published in official gazette, the official language shall have priority in accordance of Constitution.[41] The problem is, that the Constitution at some point recognises all four languages as official languages. So, which ones actually have the priority? Based on the rule of restriction and with the help of a Law No. 02/L-37 of 2006 on the Use of Languages, we are able to conceptualize the official language in Kosovo and determine that the languages with priority are Albanian and Serbian, and they could be viewed as state languages.		

Special cases of De Jure and De Facto		
North Macedonia	Amendment V of Article 7 of Constitution	Macedonian
In the Macedonian Constitution, another language, by very vague wording, is recognized. It is Albanian language, which was restricted to territories where the population consists of at least 20 % of the language minority. Despite some constitutional changes and the issue of the Law on Use of Language, which seems to be unconstitutional, there are still restrictions in equality, for example, in education. Because of the restriction, despite the Albanian authentic language version in the official gazette, the state language is only one, and that is Macedonian.		
San Marino	Two main texts: Statuses of 1600, Declaration of Citizen Rights	Italian
The Statuses (Statuta Decreta ac Ordinamenta Illustris Reipublicae ac Perpetuae Libertatis Terrae Sancti Marini) from 1600 were written in Latin. Based on the rule, that the language of constitution (or constitutional text) is the state language De Facto, the state language of San Marino would be Latin. Contrary, the Declaration of Citizen Rights from 1974 was already written in Italy. This raises a question: which language is the state language, or is it possible that both languages are state languages? To answer the question, we must look in the official gazette. Since San Marino does not have any general language law but regulates languages in specific areas as public administration or education, where only the Italian language is elevated, the only state language is Italian.[42]		
The United Kingdom		English

5. Conclusion

In my article, I dealt with the issue of understanding the state language and the possibility of determining it through the concepts of De Jure and De Facto. I first defined a sample of 42 states, and examined their constitutions, primarily in terms of the languages in which they are written and whether they contain provisions on the state language. Based on this observation, I concluded that it is possible to find 4 groups of possible relationships between De Jure and De Facto state languages.

One group, the transition group, could be perceived as transitional because by the end of 2024, when this study was being created, all examples from this group had already passed into the other groups. I

[36] The Annex 4, which represents Bosnian and Herzegovinian Constitution is also known as *Dayton Agreement*. P. GAETA, *The Dayton Agreements and International Law*, in *European Journal of International Law*, 7(2), 1996, p. 148.
[37] K. DESCHOUWER, *Ethnic Structure, Inequality and Governance of the Public Sector in Belgium*, Geneva, 2004, p. 25.
[38] V. SHARMA, *Linguistic Policy of Belgium*, in *International Journal of Creative Research Thoughts*, 6(2), 2018, p. 1137.
[39] *The German-speaking Community*. Council of Europe, https://www.coe.int/en/web/portal/belgianchairmanship-germanspeakingcommunity.
[40] *KUSHTETUTA E REPUBLIKËS SË KOSOVËS*, Gazeta Zyrtare e Republikës së Kosovës, https://gzk.rks-gov.net/ActDetail.aspx?ActID=8650.
[41] *Kushtetuta e Republikës së Kosovës*, Ministria e Administrimit të Pushtetit Lokal, https://mapl.rks-gov.net/legjislacioni-dhe-politikat/kushtetuten-e-republikes-se-kosoves/.
[42] W. SROKA, *San Marino*, in W. HÖRNER et. al. (eds.), *The Education Systems of Europe*, Cham, 2015, p. 707.

therefore found that the research sample was dominated by those states in which the situation is De Jure and De Facto the same.

I was also able to determine which languages are actually state languages for all of these states. For making such conclusions, it was necessary to say that looking at the language of the constitution or at the language provisions in the constitution is not sufficient to determine the state language. It is necessary for correct interpretation to also look into other laws in the state, especially those regulating language, or at other provisions of the constitution, to see if they somehow restrict any of the dominant languages.

Also, every group is connected with a diverse background for deciding about enshrining languages in their constitution. Every group thus have both positive and negative implications on such an arrangement. Generally, most of them are connected with the issue of transparency, legal clarity, nationhood and the ability to set a proper status hierarchy for languages in the state.

I therefore believe that the main contribution of this article will be a better understanding of the language situations in different European countries. At the same time, this article opens up space for future research that will deal with the conceptualization of official language.

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The Luxembourgish Language Law and Policy: a Fairy Tale come true?

*Stefaan van der Jeught**

Abstract: This article examines language law and policy in the only EU Member State that has a trilingual official language policy in force throughout its territory. Under Luxembourg law, Luxembourgish is designated as the 'national language'. French, on the other hand, is designated as the 'legislative language'. In addition, Luxembourgish, French and German are the three 'administrative and court languages'. The present study adopts a law in context approach, integrating the legal analysis of this unique language policy with an overview of the historical background and data on actual language use and practices. The main challenge of Luxembourg's language policy is highlighted, namely finding a balance between national identity and social cohesion.

Keywords: official multilingualism, trilingualism, Luxembourg, social cohesion.

1. Introduction

In 1981, the American scholar Eric Stein published a seminal article on the Court of Justice of the European Union (EU) in which he observed that the Court had been "*tucked away in the fairyland Duchy of Luxembourg and blessed, until recently, with benign neglect by the powers that be and the mass media (...)*".[1]

Since then, the subject of the Court and its constitutional role has been the focus of numerous debates, media attention and scholarly contributions. However, the *benign neglect* noted by Stein still fully applies to the *fairyland Duchy of Luxembourg*, particularly with respect to the legal aspects of its unique and unparalleled official multilingualism.

In contrast to the numerous sociolinguistic analyses which have examined Luxembourg's linguistic superdiversity,[2] it is noteworthy that there has been a paucity of legal analysis, notwithstanding the

* *Court of Justice of the European Union and Vrije Universiteit Brussel (VUB), Stefaan.Van.Der.Jeught@vub.be, orcid.org/0000-0003-4278-0175.* This article has been written in a personal capacity. It does not bind the institution that employs the author.

[1] E. STEIN, *Lawyers, Judges, and the Making of a Transnational Constitution*, *American Journal of International Law*, 75 (1), p. 1-27. Part of the research for this article was originally conducted for my Ph.D. thesis on *'Conflicting Language Policies in the EU and its Member States*', which I defended at the Vrije Universiteit Brussel (VUB) in September 2015. The main part of the thesis (with the exception of the chapter on Luxembourg) was published in 2015 (S. VAN DER JEUGHT, *EU Language Law*, Groningen, 2015, second revised edition 2025). The present article, however, is a completely revised and updated contribution on the Luxembourg language regime.

[2] As regards recent sociolinguistic analyses, the following should be mentioned, among others: C. PINTER, *Mehrsprachigkeit und Identitätsbildung im Grosshertogtum Luxemburg: eine sprachbiografische und diskurslinguistische Untersuchung im superdiversen Kontext*, Berlin, 2023; F. COLOTTE, *Situation linguistique au Luxembourg: nouvelles approches sociolinguistiques*, *Mémoires de l'Académie de Metz*, 2017, p. 351-361; C. KIRSCH, J. DUARTE & A. PAIVLANEN, *Language policy, professional development and sustainability of*

rather unique legal features of Luxembourg's language regime. It is evident that the two approaches differ in nature. The (socio)linguist's primary focus is on diversity as a phenomenon, whereas the lawyer's attention is predominantly directed towards the realm of linguistic rights and their enforceability.[3] The case of Luxembourg is of particular interest in this regard, as it is the only EU Member State that has adopted a multilingual policy based on personal rather than territorial criteria.[4] This entails that three languages, namely French, German and Luxembourgish,[5] may be used in dealings with the authorities throughout the territory.[6]

The present article is divided into the following sections. The second section provides an overview of the historical background to the development of this unique linguistic situation, drawing upon doctrine and original source materials from the Luxembourgish Official Journal.[7] The third section is dedicated to an examination of the legal intricacies of language rights in both the public and private spheres. The fourth section assesses the situation in the schooling system, the (legal) status of the various languages and their resulting daily use. The latter section employs a *law in context* approach, drawing upon statistical data on language proficiency and daily use among residents, particularly comparing the Eurostat surveys *Europeans and their languages* from respectively 2012 and 2024.[8] The final section offers some general thoughts on the Luxembourgish language regime.

2. Once upon a time: a national history on the Germanic-Romance language border

Luxembourg's present linguistic situation is evidently rooted in its geographical position, as the territory has always been located on the border between the Germanic and Romance linguistic areas of Europe.[9] For centuries, the German and French languages have competed for dominance.[10] From the 13th century onwards, French superseded Latin as the language of the nobility, and even the emerging merchant class adopted it, influenced by the prestige associated with it. Conversely, the majority of the

multilingual approaches, in C. KIRSCH & J. DUARTE (eds.), *Multilingual approaches for teaching and learning*, London, 2020, p. 186-203; R. GOMEZ-FERNANDEZ & A. QUINTUS, *Culturally and linguistically diverse students at Europe's crossroads: the case of Luxembourg*, in J. JIMENEZ-SALCEDO (ed.), *Small is multilingual: language and identity in micro-territories*, Frankfurt, 2020.

[3] PH. VAN PARIJS, *Linguistic Justice for Europe and the World*, Oxford, 2011, p. 175.

[4] PH. MAGÈRE, B. ESMEIN & M. POTY, *La situation de la langue française parmi les autres langues en usage au Grand-Duché de Luxembourg*, Luxembourg, 1998, p. 35. In a language policy based on personal criteria, it is the natural or legal person who (to some extent, i.e. from among the languages which have official status) determines the language to be used with the authorities (see PH. VAN PARIJS, *op. cit.,* p. 133 *et seq.*; see S. VAN DER JEUGHT, *EU Language Law*, Groningen, 2025, p. 33 *et seq.* for an overview of the language regimes of EU Member States in this respect).

[5] In the English language, the term "*Luxembourgian*" is also frequently employed (see, for instance, *Collins online dictionary* – which, incidentally, also describes the language as a Germanic *dialect*). In this article, however, the term "*Luxembourgish*" will be used, as this is the term that is consistently employed in official publications by the Luxembourgish authorities. An alternative form is "*Lëtzebuergesch*", which is the original denomination of the language. See also Demonym confusion and poll, Which is correct - Luxembourger or Luxembourgian?, *RTL Today*, 30 December 2019, available here (accessed 30.3.2025).

[6] A notable exception is the 2023 law on the use of English in certain notarial acts concerning SICAVs (Société d'Investissement à Capital Variable), which does not oblige an official translation to be provided when the act is registered. See the law of 21 July 2023 here.

[7] *Journal official du Grand-Duché du Luxembourg*, available here.

[8] *Europeans and their languages*, May 2024, European Union (Eurostat) available here (accessed 30.3.2025).

[9] C. PEERSMAN, G. RUTTEN & R. VOSTERS, *Past, Present and Future of a Language Border*, Berlin/Boston, 2015, p. 1.

[10] D. REDINGER, *Language Planning and Policy on Linguistic Boundaries: the case of Luxembourg*, in R. MC CALL MILLAR (ed.), *Marginal Dialects: Scotland, Ireland and beyond, Forum for Research on the Languages of Scotland and Ireland,* Aberdeen, 2010, p. 90.

population, comprising serfs and peasants, remained linguistically isolated, speaking exclusively the local Germanic dialect.[11]

Throughout history, the territory of Luxembourg, which today comprises the Grand Duchy of Luxembourg and the Belgian Province of Luxembourg, has seen many changes in political administration. Initially under the rule of the Burgundians from 1443 to 1506, it was subsequently ruled by the Spanish from 1506 to 1684. The territory subsequently fell under the rule of the French (1684-1698), the Spanish once again (1698-1714), the Austrians (1714-1795), and once more the French (1795-1815). In 1815, Luxembourg formed a union with the Netherlands, as a personal possession of the King of the Netherlands, which endured until 1830. During the period of the Belgian Revolution (1830-1839), Luxembourg was de facto part of Belgium, with the exception of the town of Luxembourg.[12] The Treaty of London (19 April 1839) stipulated the cession of half of the territory of the Grand Duchy to Belgium, an assertion of sovereignty that was subsequently consolidated by the Second Treaty of London (11 May 1867), which granted full sovereignty to Luxembourg.[13]

In the 15th and 16th centuries, both German and French were used as administrative languages.[14] However, by the 17th century, French had become the sole administrative language,[15] with the exception of the lower courts, which continued to handle cases in German.[16]

During the subsequent brief period of French rule, the use of German was comprehensively prohibited in the administration, including in the lower courts.[17] The French language maintained its exclusive use in the administration during the subsequent periods of Spanish and Austrian rule.[18]

During the second French period, French was formally introduced as the exclusive language of the administration and all the courts.[19] An examination of the *Mémorial* (the Official Journal of Luxembourg, which was initially entitled the *Offizielles Journal – Journal Officiel* in 1815 and the *Verwaltungsmemorial – Mémorial administratif* from 1817) reveals that from 1775 to 1798, all legal texts were written in French. However, towards the end of this period, there is also evidence of the use of German in legal acts.[20] It is important to note that during this period of political transition, the local Germanic dialect – the precursor of the language known today as Luxembourgish – remained the primary means of communication for the majority of the population.[21]

The Union with the Netherlands (1815-1830)

[11] D. REDINGER, *Language Planning and Policy on Linguistic Boundaries: the case of Luxembourg*, *op. cit.*, p. 92.
[12] See A. COLLART, A., *Am Wege zur Unabhängigkeit Luxemburgs*, Luxembourg, 1938.
[13] P. SCHMITT, *Précis de droit constitutionnel – Commentaire de la Constitution luxembourgeoise*, Luxembourg, 2009, p. 54; P. EYSCHEN, *Das Staatsrecht des Grossherzogtums Luxemburg*, Tübingen, 1910, p. 1.
[14] Allegedly French seems to have been predominant as early as the 15th century (see J.-M. YANTE & M. WEIS, *Gouverner par la loi au duché de Luxembourg aux 15e et 17e siècles* [Governing by law in the duchy of Luxembourg in the 15th and 17th centuries], Hémecht – Revue d'Histoire luxembourgeoise - Zeitschrift für Luxemburgische Geschichte, 2024, p. 42-52).
[15] J.-M. YANTE & M. WEIS, *op. cit.*, p. 49 et seq.
[16] P. EYSCHEN, *op. cit.*, p. 37. To illustrate this point, it is notable that a legislative text concerning forestry authored by Archdukes Albert and Isabelle was published during this period solely in the French language (Edit, *Ordonnance et Règlement des Archiducs nos Princes Souverains, sur le fait des bois*, 14 September 1617).
[17] J.-C. FRISCH, *Le Luxembourg, pays multilingue; La place du français dans l'enseignement au Grand-Duché de Luxembourg* in PH. MAGÈRE, B. ESMEIN & M. POTY (eds.), *op. cit.*, p. 108.
[18] An example is the *Ordonnance et règlement de sa majesté impériale et catholique sur le fait de la Chasse & de la Pêche* of 10 June 1732 (during the Austrian reign).
[19] Decree of 9 vendémiaire in the year IV (1796); P. EYSCHEN, *op. cit.*, p. 37.
[20] A regulation of 4 August 1800 on tax law (*recouvrement*) was also published in German (*Verordnung über die Erhebung der direkten Abgaben*), presumably because the authorities wished to ensure that all citizens comprehended their fiscal obligations. My research yielded further examples in the year 1802.
[21] D. REDINGER, *Multilingual Luxembourg: Language Attitudes and Policies*, Essex, 2008, p. 108.

The Final Act of the Vienna Congress of 9 June 1815 assigned the Grand Duchy of Luxembourg to the German Confederation (*Deutscher Bund*) under the personal sovereignty of William I, King of the Netherlands.[22] In effect, the Grand Duchy was thus united with the Kingdom of the Netherlands, and the Dutch Constitution was applied. However, the civil and penal laws of the French era remained in force.[23] In relation to the linguistic policy, it has been frequently posited by scholars that the Dutch ruler sought to supplant French with German and even Dutch as the administrative languages of the country.[24] However, research findings indicate that the limited number of legislative acts documented in the *Mémorial* are consistently published in both German and French. From 1814 to 1823, legislative acts appear to have been published in both languages. While there are instances of acts being published in French only, none appear to be in German only.

Uncertainty and upheaval in the aftermath of the Belgian Revolution (1830-1839)

Following the issuance of the Royal Decree of 4 June 1830, which pertained to the linguistic policy across the entire Kingdom, the use of both French and German in the Grand Duchy was formally endorsed by the king.[25] Subsequently, on 31 December 1831, the king promulgated a further royal decree, which granted the Grand Duchy of Luxembourg greater autonomy and delegated the exercise of royal powers to a governor, together with a government committee.[26] In the wake of the proclamation of the Belgian Constitution of 7 February 1831, Luxembourg came to be de facto incorporated into the Kingdom of Belgium, albeit with the exception of the strategically pivotal town of Luxembourg, within which a Prussian garrison was deployed ensuring Dutch jurisdiction was maintained (the Prussian King being an ally of King William).[27]

As to the linguistic situation in this period of upheaval, it is noteworthy that on 14 June 1833, the president of the government committee in Luxembourg proclaimed linguistic freedom. This proclamation stipulated that both German and French were designated as official languages and that citizens were entitled to use either of these languages in their interactions with the authorities. Nevertheless, the Prussian military commanders of the garrison in the town of Luxembourg were instructed by the president of the German Confederation to accept only communications in German.[28]

[22] P. SCHMITT, *op. cit.*, p. 54. The name of the King was *Willem* (in Dutch) and *Guillaume* (in French). The German Confederation was constituted as an association of 39 predominantly German-speaking sovereign states in Central Europe. The Congress of Vienna, a pivotal moment in the geopolitical landscape, was instrumental in the formation of this alliance, serving as a replacement for the dissolution of the former Holy Roman Empire in 1806, a consequence of the Napoleonic Wars.

[23] A. BONN, *Le Contentieux Administratif en droit Luxembourgeois*, Luxembourg, 1966, p. 11.

[24] J.-C. FRISCH, *op. cit.*, p. 108. PAULY's claims that King William wanted Dutch to be added as a second administrative language (along with French), but makes no mention of German (M. PAULY, *Histoire du Luxembourg,* Brussels, 2013, p. 80).

[25] *Arrêté royal grand-ducal du 4 juin 1830 contenant des modifications aux dispositions existantes au sujet des diverses langues en usage dans le royaume*, *Journal officiel du Royaume des Pays-Bas*, Tôme vingt-cinquième, nb. 19, published in French and Dutch.

[26] P. SCHMITT, *op. cit.*, p. 56.

[27] P. SCHMITT, *op. cit.*, p. 55. Frederick William III (German: Friedrich Wilhelm III; 3 August 1770 – 7 June 1840) was King of Prussia from 16 November 1797 until his death in 1840. Concurrently, he served as Elector of Brandenburg within the Holy Roman Empire until 6 August 1806, when the dissolution of the empire occurred.

[28] P. EYSCHEN, *op. cit.*, p. 37. The Confederation's sole organ was the *Bundesversammlung*, otherwise referred to as the Federal Convention (or the Confederate Diet). The Convention comprised representatives of the member states. The presiding representative was the Austrian delegate.

In 1834, King William issued a Royal Decree officially sanctioning linguistic freedom for the German and French languages.[29] Nevertheless, the practical scope of this Decree was, in fact, limited to the town of Luxembourg. All citizens were granted legally enforceable rights to use either language in their oral or written dealings with public authorities. It is further observed that the Belgian authorities implemented a comparable policy of bilingualism (French/German) in the regions under their jurisdiction.[30]

The Treaty of London (18 April 1839) and the German Confederation (1839-1867)

The treaty brought a definitive end to the prevailing state of uncertainty and led to the division of the country into distinct entities. A significant portion of the territory was ceded to Belgium, where French was the sole official language, while the remainder of the country gained independence. It is noteworthy that at this time, very few citizens of Luxembourg had French as their mother tongue. Nevertheless, the prominent Luxembourg upper classes, who often used French, effectively ensured that French became the administrative, legislative and political language of the newly established state. Conversely, the clergy and the press primarily used German.[31]

Concurrent with this process, the establishment of political independence served to consolidate the position of the Luxembourgish language. The local vernacular came to be regarded as a distinguishing feature that set the country apart from its neighbours, thus contributing to the formation of a distinct Luxembourgish identity.[32]

The Luxembourg Constitution of 12 October 1841 was notable for the absence of any provisions on language arrangements. However, the decree of King William of 1834, which had established the principle of linguistic freedom, was republished in the same year.[33] The subsequent Constitution of 9 July 1848 explicitly enshrined linguistic freedom with regard to French and German. Article 30 of the Constitution stipulated that:

"*L'emploi des langues allemande et française est facultatif. L'usage n'en peut être limité*" (The use of the German and French language is free. The use thereof may not be limited).[34]

Consequently, linguistic freedom for both French and German was constitutionally guaranteed henceforth. The introduction of French on an equal footing with German, a policy which was harsly criticized in the press,[35] clearly served a political purpose, namely to guarantee Luxembourg's

[29] *Arrêté royal grand-ducal du 22 février 1834 concernant l'usage des langues allemande et française dans les actes publics* (Grand-Ducal Royal Decree of 22 February 1834 concerning the use of the German and French languages in public documents – own translation), *Grand-Duché (Ville)*, p. 99.
[30] For instance, consider a regulation pertaining to the collection of firewood from communal lands, which was promulgated by the Belgian King Leopold I. This regulation was exclusively applicable to areas outside the municipality of Luxembourg and was published in both French and German (*Règlement de la députation permanente du 13 juillet 1837 sur l'exercice du droit d'affouage et autres émoluments communaux)*.
[31] G. TRAUSCH, *La situation du français au Luxembourg: une prééminence précaire dans un pays d'expression trilingue* in PH. MAGÈRE, B. ESMEIN & M. POTY (eds.), *La situation de la langue française parmi les autres langues en usage au Grand-Duché de Luxembourg, Luxembourg*, 1998, p. 24; D. REDINGER, Multilingual Luxembourg: Language Attitudes and Policies, *op. cit.*, p. 108 ; M. PAULY, *op. cit*., p. 84.
[32] D. REDINGER, *Language Planning and Policy on Linguistic Boundaries: the case of Luxembourg*, *op. cit.*, p. 92.
[33] *Arrêté no 8 relatif à la réimpression de l'arrêté de sa Majesté* of 22 February 1834.
[34] Art. 30 became art. 29 (unchanged) in the Constitution of 27 November 1857. Art. 23 of the Belgian Constitution of 1831 has a similar wording ("*L'emploi des Iangues usitees en Belgique est facultatif; iI ne peut etre regie que par la loi, et seulement pour les actes de I'autorite publique et pour les affaires judiciaires*").
[35] Notably by the newspaper *Luxemburger Wort*. Cf. J. REISDOERFER, *Remarques sur la politique linguistique au Grand-Duché de Luxembourg : une guerre de langues?*, Nos cahiers: Lëtzebuerger Zäitschrëft fir Kultur, 2020, p. 73.

sovereignty vis-à-vis the Germanic sphere of influence, especially in view of Luxembourg's continued membership of the German Confederation.[36] In addition, in 1843, legislation was enacted that led to French being designated as a mandatory school subject, on par with German.[37] The government introduced the compulsory teaching of French from primary school onwards. However, at the request of local authorities and for serious reasons, the government could waive the teaching of French. This opting-out possibility was inevitable due to the lack of qualified bilingual teachers, resulting in German remaining dominant in the schooling system.[38]

The independent Grand-Duchy (1867)

Following the dissolution of the German Confederation in 1866,[39] the Grand Duchy of Luxembourg was granted full sovereignty, a fact that was formally recognised by the Treaty of London on 11 May 1867. Subsequently, Article 29 of the Constitution of 17 October 1868 reaffirmed the freedom of language stipulated in the Constitution of 1848, explicitly stating that the use of both German and French was to be permitted without restriction. The Constitutional Committee explicitly declared that this provision was based on the 1833 declaration regarding the right to use freely either language. It is important to note, however, that the French language version of the Constitution was the original, with the German language version being only an official translation.[40]

World War I and II

Research in the *Mémorial* indicates that French was still used during the First World War, despite the country being occupied by Germany. However, during the Second World War, under Nazi occupation, the use of French was prohibited and German was the only permitted language.[41] The Nazi regime imposed a prohibition not only on the use of the French language, but also on specific colloquial expressions in Luxembourg, such as *merci*, *pardon*, and *madame*.[42] In the context of these regulations, shopkeepers found to be allowing the use of French faced the prospect of closure of their shops. Furthermore, a regulation was in place which obliged Luxembourgers bearing a French first name to change it to a German one.[43] During the war, rather than French, it was therefore the Luxembourgish language that gained strength as a symbol of national identity.[44]

From a linguistic perspective, Luxembourgish can be categorised as a Moselle Franconian language variety, demonstrating significant affinities with other Germanic linguistic varieties

[36] P. SCHMITT, *op. cit.*, p. 54.
[37] *Loi du 26 juillet 1843, n° 1709b, sur l'instruction primaire*, 26 July 1843; M. PAULY, *op. cit.*, p. 83.
[38] K. HORNER & J.-J. WEBER, *Multilingual education and the politics of language in Luxembourg*, in C. PEERSMAN, G. RUTTEN & R. VOSTERS, *op. cit.*, p. 238.
[39] The Confederation was dissolved after the victory of the Kingdom of Prussia in the Seven Weeks' War over the Austrian Empire in 1866.
[40] P. EYSCHEN, *op. cit.*, p. 219.
[41] See, for instance, the *Verordnung über die Erhebung der Gewerbesteuer* [Regulation on Industry Tax] of 31 March 1943, *Mémorial* A1 of 31 March 1943. On the Nazi language policy, which has never been studied in detail, see REISDORFER, *op. cit.* (2020), p. 78 - 82.
[42] *Verordnung über das Verbot des Gebrauchs der Französischen Sprache in der Öffentlichkeit* of 1 June 1941 (Regulation on the prohibition to use French in public), exhibit at *Musée National de la Résistance et des droits humains* in Esch-sur-Alzette (Luxembourg), visited on 8 June 2013.
[43] *Verordnung betreffend die Änderung von Vor-und Familiennamen* (Regulation on the change of First Names and Surnames), 31.3.1941, exhibit showing an administrative decision to change a name from Camille to Kamill, consulted at the *Musée National de la Résistance et des droits humains* in Esch-sur-Alzette (Luxembourg), visited on 8 June 2013.
[44] D. REDINGER, *Language Planning and Policy on Linguistic Boundaries: the case of Luxembourg*, *op. cit.*, p. 93; M. PAULY, *op. cit.*, pp. 8 and 101.

prevalent in the region.[45] Prior to 1900, the language was referred to as *Lëtzebuerger Däitsch* (Lëtzebuergesch German) or even *schlecht Daïtsch* (bad German).[46] A proposal by the socialist Member of Parliament Caspar Spoo in 1896 to introduce Luxembourgish as a language in Parliament was rejected on the grounds that it was not considered to be a real language.[47] By contrast, the first authors writing in Luxembourgish, such as Edmond de la Fontaine (1823-1891), also known by his pen name *Dicks*, Michel Lentz (1820-1893) or Antoine Meyer (1801-1857), used to refer to the language more affectionately as *onst Däitsch* (our German).[48] In 1872 Michel Rodange (1827-1876) published his literary epic "The Fox" (*De Reenert*), a satire on Luxembourg's society, entirely in the Luxembourgish language.[49]

In this respect, the events surrounding the 1941 census, which was conducted under German occupation and focused on nationality and language, appear to have been of pivotal significance. It has been asserted that in that census (*Personenstandaufnahme*, 10 October 1941), as many as 96% or even 98% of Luxembourgers indicated that "Luxembourgish" was their language of choice, as opposed to the politically correct response of German.[50] However, it has also been asserted that the *Gauleiter* (Gustav Simon) pre-empted the census, having been apprised of the potential outcome.[51] Ongoing research has yielded initial results in 2024, providing some insight into this matter.[52] However, it remains challenging to accurately assess the results. Nevertheless, it is noteworthy that the census did engender a sense of resistance and served to reinforce the Luxembourgish identity.

The aftermath of World War II

In the immediate post-liberation period, a number of acts continued to be translated into German. However, from 1945 onwards, statutes were published exclusively in French, with the Regulation of 26 July 1944 on the state of siege serving as a final illustration of the legal co-existence of German and French.[53] Beginning in 1945, the official journal retained its bilingual title, yet acts were no longer available in German. Following the war, the Constitutional revision of 6 May 1948 abolished the freedom of language, instead leaving it to the law to regulate the use of languages in administrative and legal matters.

In this regard, the new article 29 stipulated that:

> "*La Loi règlera l'emploi des langues en matière administrative et judiciaire.*" (The rules on the use of languages in administrative matters and court proceedings shall be established by Statute).

[45] G. TRAUSCH, *op. cit.*, p. 20.
[46] R. MÜLLER, *Les débuts de la littérature luxembourgophone*, Projet Formatioun Lëtzebuergesch, ULG-Campus d'Arlon, 17 February 2007, p. 1.
[47] "*l'on ne saurait se servir de l'idiome du pays dans les débats à la Chambre, celui-ci ne constituant pas une langue*" (the idiom of the country cannot be used in debates in the Chamber, as it does not constitute a language).
[48] R. MÜLLER, *op. cit.*, p. 1.
[49] See for a bilingual edition (Luxembourgish/English): J. THILL, *The fox in a Sunday Suit and in Human Shape - De Fuuss am Frack an a Maansgréisst*, Luxembourg, 2022, available here.
[50] P. SCHMITT, *op. cit.*, p. 49; G. TRAUSCH, *op. cit.*, 20; PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit.*, p. 37.
[51] J.-C., FRISCH, *op. cit.*, p. 107; R. MÜLLER, *op. cit.*, p. 2.
[52] *Tageblatt*, 25-26 May 2024, available here.
[53] On language policy in the direct aftermath of the World War II, see HORNER, K., *The "natural history" of multilingual policy in Luxembourg: analysing strategic ambiguity and its implications for small language communities*, Sociolinguistica, 2025.

It is noteworthy that the Constitution of 1948 did not explicitly enumerate the languages to which this provision pertained.[54] Consequently, the German language lost its pre-war equal footing with the French language.[55] In the public sphere, the use of the discredited German language was progressively replaced by French. This replacement occurred in various aspects of public life, including street signage, legislation, and within the parliament.[56] Indeed, the democratisation that took place at the beginning of the 20th century had resulted in an increased use of German in Parliament; however, following 1945, the use of German was prohibited in the Chamber.[57] For a considerable period, the linguistic situation was thus characterised by an absence of clarity, due to the non-adoption of legislation pertaining to the use of languages. During this interval, the Decrees on Language Freedom for German and French, promulgated in 1834, remained in effect as they were not formally repealed until 1984.

Societal changes as of the 1960s

Since the 1960s, Luxembourgish society has undergone significant demographic shifts as a consequence of immigration, predominantly from Romance language-speaking countries such as Portugal and Italy. By 1981, foreigners constituted 26% of the total population, a figure that has persistently increased since then. This inflow has resulted in a shift in the linguistic landscape of Luxembourg, with French assuming a more prominent role in communication between the indigenous population and newcomers.[58]

Another factor that must be considered is the foundation of the European Community of Coal and Steel (ECSC) in 1951, which resulted in a considerable influx of European civil servants to Luxembourg, one of the seats of the new organisation, alongside Brussels and Strasbourg. Given that French was the predominant working language in the institutions of the ECSC, and subsequently of the European Economic Communities (and is to this day of the European Court of Justice of the EU), it is unsurprising that officials were inclined to acquire proficiency in French and use it in their daily activities.[59]

The perceived threats to cultural cohesion gave rise to a series of lobbying activities aimed at enhancing the status of Luxembourgish. The 1970s saw the establishment of the group *Actioun Lëtzebuergesch*, which sought to encourage local residents to use Luxembourgish in all circumstances and to ensure the language's presence on street signs, banknotes and stamps.[60] A salient issue in this regard pertains to the historical evolution of Luxembourgish. Prior to this juncture, Luxembourgish was predominantly a spoken language. Indeed, the Luxembourgish population had long regarded German as the written form of their mother tongue.[61] In 1946, an initial attempt was made to introduce an orthography for Luxembourgish, with the political objective of emphasising the distinction between that language and German.[62] This endeavour, however, met with failure. Subsequent to this, in 1975, a revised orthography was published, which underwent a further slight adjustment in 1999, and was finally replaced in 2019.[63]

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[54] PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit*., p. 36.
[55] G. TRAUSCH, *op. cit.*, p. 21.
[56] D. REDINGER, *Language Planning and Policy on Linguistic Boundaries: the case of Luxembourg*, *op. cit.*, p. 94; PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit.*, p. 66.
[57] PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit.*, p. 65.
[58] For a more detailed discussion of this topic, please refer to Section 4 of the present contribution.
[59] PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit.*, p. 60.
[60] D. REDINGER, *Language Planning and Policy on Linguistic Boundaries: the case of Luxembourg*, *op. cit.*, p. 95.
[61] PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit.*, p. 42.
[62] Arrêté ministériel du 5 juin 1946 portant fixation d'un système officiel d'orthographe luxembourgeoise.
[63] *Règlement grand-ducal portant réforme du système officiel d'orthographe luxembourgeoise*, *Mémorial* A 112, 11 August 1999, replaced by *Règlement grand-ducal du 26 octobre 2019 déterminant les modalités d'organisation et de fonctionnement du Conseil permanent de la langue luxembourgeoise, l'indemnisation de ses*

In 1984, the legislator was compelled to intervene,[64] which culminated in the enactment of the 1984 Law on the Use of Languages (*Loi sur le régime des langues*, 24 February 1984).[65] This legislative act formally implemented the constitutional provision (article 29 of the Constitution of 6 May 1948) and formally designated Luxembourgish as the national language, while French was recognised as the language of legislation. French, German and Luxembourgish all designated as administrative and court languages.

Finally, on 17 January 2023, the Constitution was amended to grant constitutional status to Luxembourgish, as well as to French and German. It is noteworthy that the Constitution now formally recognises Luxembourgish as the *national* language, thereby affording it a distinct constitutional and political standing.[66] The present wording of article 4 of the Constitution (which has replaced article 29 of the previous Constitution) is as follows:

La langue du Grand-Duché de Luxembourg est le luxembourgeois. La loi règle l'emploi des langues luxembourgeoise, française et allemande (The language of the Grand Duchy of Luxembourg is Luxembourgish. The law regulates the use of Luxembourgish, French and German, own translation).

3. The regulation of public and private language use

3.1 Public language use

The Constitution stipulates (both prior to and following the 2023 revision) that the regulation of language use is to be determined by the legislator. In the context of the public sphere (defined as legislation, administration and court proceedings) the issue had already been addressed by the 1984 law on the use of languages, as previously mentioned. This law, which has never been changed, reads as follows (own translation):

"Article 1 - National language
The national language of the Luxembourgish is Luxembourgish.

Article 2 - Language of legislation
Statutes and executive Regulations shall be drafted in French. When Statutes and Regulations are accompanied by a translation, only the French text is authentic. In cases where Regulations other than those mentioned in the previous paragraph are issued by a State organ, municipalities or public authorities in a language other than French, only the text in the language used by that authority shall be authentic. This article does not derogate from provisions that apply in the field of international agreements.

Article 3 - Languages of the administration and in court proceedings

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membres et portant abrogation du règlement grand-ducal du 30 juillet 1999 portant réforme du système officiel d'orthographe luxembourgeoise, *Mémorial* A 734, 30 October 2019.

[64] On the origin of this law, see J. REISDOERFER, *op. cit.* (2020), p. 85-88.

[65] Version consolidée applicable au 1.9.2020, available here (accessed 25.2.2025). Article 3bis recognises German sign language in Luxembourg. People who are hard of hearing, deaf or unable to speak have the right to use sign language in their dealings with the public administration. On written request to the Minister responsible for disability policy, at least forty-eight hours before the meeting, the Minister will provide an interpreter. The cost of the interpreter is borne by the State budget. Any pupil who is hearing-impaired, deaf or unable to speak has the right to receive primary and secondary education in sign language under certain conditions.

[66] See A. STEICHEN, *La Constitution luxembourgeoise commentée*, Louvain-la Neuve, 2024.

In administrative matters, contentious or non-contentious proceedings, as well as in court proceedings, the French, German or Luxembourgish languages may be used, without prejudice to special provisions regarding certain matters.

Article 4:
Administrative applications
When an application is drafted in Luxembourgish, in French or in German, the administration must reply, insofar as possible, in the language chosen by the applicant.
(...)".[67]

It is evident that the 1984 Law fails to define the (presently constitutional) concept of *national* language.[68] Instead, it merely stipulates that the national language of the Luxembourgers is Luxembourgish. While this general affirmation may appear to assign a superior status to Luxembourgish in relation to French and German (similar to what is stated in the 2023 constitutional amendment), such a status is not substantiated by the other provisions.

Moreover, the designation of French as the language of legislation is unambiguous; however, the concept of languages of the administration is somewhat perplexing. The term is linked to the use of languages in courts, which would appear to imply a linguistic right to use any of the three languages in dealings with the administration. This position appears to be consistent with Article 4 of the 1984 Law, which suggests that citizens have the right to use any of the three languages. However, it should be noted that the administration does not bear an absolute obligation to provide a response in the chosen language; rather, it is required to do so wherever possible.

It is evident that the term *official language* is deliberately circumvented, and that the terminology employed in the 1984 Law does not correspond at all to the terminology normally used in public law.[69]

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[67] In the original version :
« *Art. 1er - Langue nationale*
La langue nationale des Luxembourgeois est le luxembourgeois.
Art. 2.- Langue de la législation
Les actes législatifs et leurs règlements d'exécution sont rédigés en français. Lorsque les actes législatifs et réglementaires sont accompagnés d'une traduction, seul le texte français fait foi.
Au cas où des règlements non visés à l'alinéa qui précède sont édictés par un organe de l'Etat, des communes ou des établissements publics dans une langue autre que la française, seul le texte dans la langue employée par cet organe fait foi. Le présent article ne déroge pas aux dispositions applicables en matière de conventions internationales.
Art. 3. - Langues administratives et judiciaires
En matiére administrative, contentieuse ou non contentieuse, et en matière judiciaire, il peut être fait usage des langues française, allemande ou luxembourgeoise, sans préjudice des dispositions spéciales concernant certaines matières.
Art. 4. -Requêtes administratives
Lorsqu'une requête est rédigée en luxembourgeois, en français ou en allemand, l'administration doit se servir, dans la mesure du possible, pour sa réponse de la langue choisie par le requérant. (…)».

[68] D. REDINGER, *Language Planning and Policy on Linguistic Boundaries: the case of Luxembourg*, *op. cit.*, p. 91. In the parliamentary discussion (Chambre des Députés, Session ordinaire 1982-1983, 2535/4, 9) Luxembourgish is defined as follows : « Le luxembourgeois est la langue maternelle des Luxembourgeois, première langue dont se sert le Jeune être pour communiquer ses désirs et pensées. En outre, le luxembourgeois est la langue usuelle des Luxembourgeois, la langue qui est parlée sur tout le territoire du Grand-Duché, par tous les Luxembourgeois venant de toutes les classes sociales et en toutes ocasions (Luxembourgish is the mother tongue of the people of Luxembourg, the first language used by young children to communicate their desires and thoughts. In addition, Luxembourgish is the everyday language of the people of Luxembourg, the language spoken throughout the Grand Duchy by all Luxembourgers from all social classes and on all occasions). See J. REISDOERFER, *op. cit.* (2020), p. 90-93.

[69] PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit.*, p. 9.

In any event, given French's status as the language of legislation, it follows that statutes and executive regulations are not drafted in Luxembourgish, but exclusively in French. It is also noteworthy that there exists no legal obligation to translate laws into German or the national language of Luxembourg. In the event that a translation is available, it is the French version that is considered authentic and legally binding.

It is acknowledged that the 1984 Law does indeed permit the drafting of secondary legislation by state organs, municipalities or public authorities in languages other than French (without specifying which language is implied). In such instances, the *other* language is recognised as being authentic. It has been observed that, particularly at the local level, German remains a prevalent language, for instance, in municipal council publications.[70] In the Chamber of Deputies, Luxembourgish is employed during oral debates or for questions, whilst French is used when drafting legislation.[71] German is also employed when the authorities wish to guarantee the comprehensibility of the text for all citizens, as evidenced by tax letters.[72] As Trausch asserts, the guiding principle appears to be a commitment to use French wherever possible, and German only where necessary.[73]

In administrative matters and before the courts, French, German or Luxembourgish may be used (the languages of the administration and the courts). However, the somewhat peculiar caveat clause "*without prejudice to special provisions regarding certain matters*" casts doubt on to the enforceability of such linguistic rights. This exception appears to refer to the judiciary, where the language rules are intricate and inconsistent across different courts. Regardless, prior to their initial appointment, judges are obligated to demonstrate a satisfactory level of proficiency in all three languages.[74]

In practice, the official language of civil and commercial courts is French, whereas judgments in criminal cases are often delivered in German.[75] Despite the assertion in official government information on language use by courts that none of the three languages holds precedence over any other, it is also established that discussions and hearings are usually conducted in French and/or Luxembourgish, with German being used less frequently.[76] This practice is reported to be a matter of custom and a consequence of the fact that the majority of lawyers are francophone and that the laws are in French.[77] In criminal proceedings, judicial decisions frequently cite reports issued by the Grand-Ducal Police, which are typically written in German. In instances where individuals lack proficiency in any of the three official languages, particularly in the absence of legal representation, they are obligated to secure the services of a sworn interpreter, at their own expense.[78] In criminal proceedings, should the individual summoned or the witness be unable to communicate in French, German or

[70] In 2025, the City of Luxembourg announced that it would provide interpretation into French for the meetings of the City Council (*City Magazine officiel de la Ville de Luxembourg*, 4/2025, p. 11).
[71] A. WALDER, Are Luxembourg's official languages treated equally?, *Luxemburger Wort*, 6 April 2015; PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit.*, pp. 39, 40 and 54.
[72] The tax law is in German.
[73] G. TRAUSCH, *op. cit.*, p. 22.
[74] See information on the official portal of the government of Luxembourg, *guichet.lu*, Use of languages in the Luxembourg courts, last update 24 August 2021, available here (accessed 30 March 2025).
[75] PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit.*, p. 40.
[76] See information on the official portal of the government of Luxembourg, *guichet.lu*.
[77] *Id*.
[78] *Id.* The cases in question pertain to the following: dismissals, divorces, rental contracts, and so forth. In the event that an individual requests the presence of a witness who does not possess proficiency in any of the three official languages of the country, it is their responsibility to inform the court of the necessity for an interpreter. The party in question is then responsible for covering the costs of the interpreter, which they may be able to recoup from the opposing party, should this be ordered to pay the costs and expenses of the trial. With regard to written documents, those which are written in a language other than French, German or Luxembourgish must be accompanied by translations, generally in French. In practice, documents in English (for example, a contract) may be submitted without translation.

Luxembourgish, the responsibility for arranging for an interpreter typically falls upon the prosecuting authorities, that is to say the prosecutor.[79]

Moreover, with regard to the linguistic rights of citizens to use one of the administrative languages in interactions with the administration, the proviso stipulated in Article 4, "insofar as possible", appears to confer a considerable degree of discretion to the administration to refrain from employing the language of the applicant.[80] It is important to note that while Luxembourgish is favoured in oral interactions, Luxembourg's administration continues to write almost exclusively in French.[81] Furthermore, the term used, "*application*" (*requête*), does not appear to encompass all interactions between citizens and the administration; it is restricted rather to official and written requests. Consequently, there appears to be an absence of an enforceable right for citizens to request oral information in French, Luxembourgish or German.

It has been posited that French should be considered the superior language in relation to the other languages, Luxembourgish and German, in that order. French is regarded as the true official language. In contrast, Luxembourgish and German are only used in specific, limited capacities, whereas French is an appropriate language for all official contexts.[82] From a legal perspective, this assertion is not entirely accurate. For instance, there is no enforceable right to use French in all circumstances, such as when interacting with the administration. Moreover, statistical data demonstrate the continued prevalence of Luxembourgish (see section 4). Finally, it is imperative to emphasise that linguistic proficiency in Luxembourgish constitutes an essential component of the linguistic requirements for personnel within the ambit of public administration.

3.2 Private language use

There exists no overarching legal framework that regulates private language use in Luxembourg. Consequently, both natural and legal persons are, in principle, at liberty to use the language(s) of their preference throughout the country in all private contexts, including contracts, publicity, interactions with employees, and so forth. Evidently, a significant degree of linguistic tolerance is apparent. However, certain regulations stipulate that, in specific contexts such as the labelling of food products, the languages employed must be one of the three languages of the country (French, German or Luxembourgish).[83] Nonetheless, the cumulative use of all three languages is never made mandatory. However, it is important to acknowledge the implications of the trilingual context in Luxembourg on the linguistic requirements imposed on the professional community. The following discussion will focus on the particular situation of lawyers, medical personnel and other professionals.

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[79] *Id*.

[80] D. REDINGER, *Language Planning and Policy on Linguistic Boundaries: the case of Luxembourg*, *op. cit.*, p. 91; J. REISDOERFER (2020), *op. cit.*, p. 87.

[81] See information on the official portal of the government of Luxembourg, *guichet.lu.* Citizens may submit petitions in French, German or Luxembourgish, and the administration is obliged to respond in the language selected by the petitioner, so far as is feasible. In practice, French is favoured for written language and Luxembourgish for spoken language (for work and communication). Administrative deeds are drafted in French, and the principle that 'only the French language shall prevail' applies at all levels of public administration. See also G. TRAUSCH, *op. cit.*, p. 21; J.-C. FRISCH, *op. cit.*, p. 109. PH. MAGÈRE, B. ESMEIN & M. POTY argue that the current situation is worse than under the Royal Decree of 1834 which obliged the administration to reply in the language of the applicant (*op. cit.*, p. 39).

[82] PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit.*, p. 36-37; G. TRAUSCH, *op. cit.*, p. 21.

[83] « Les informations obligatoires sur les denrées alimentaires au sens du règlement (UE) n° 1169/2011 et du présent règlement grand-ducal doivent être libellées au moins dans une des trois langues française, allemande ou luxembourgeoise. », see art. 2 of *Règlement grand-ducal du 25 août 2015 concernant l'information des consommateurs sur les denrées alimentaires, les allégations nutritionnelles et de santé ainsi que le marquage du numéro de lot*, *Mémorial* A 176 of 10 September 2015. The present provision can be considered as a confirmation of the previous legislation.

3.2.1 Lawyers

The prevailing EU rules on the freedom to provide services and establishment, in particular with regard to lawyers, were the underlying factor that compelled the Grand Duchy of Luxembourg to make its prevailing language requirements for solicitors explicit. In this regard, the 1991 Law on the Profession of Solicitor (*Loi sur la profession d'avocat*) did not stipulate any linguistic requirements for admission to the Luxembourg Bar. However, in 2002, when transposing into Luxembourg law Directive 98/5/EC regarding lawyers from other EU Member States, Luxembourg also introduced language requirements as a condition for registration with the Luxembourg Bar.[84] In order to be granted admission, it was necessary for a solicitor to demonstrate proficiency in the administrative and judicial languages of Luxembourg, namely French, German and Luxembourgish.[85] These language requirements were applicable to lawyers who had already been admitted to the Bar in another EU Member State and who wished to practise in Luxembourg under their home-country title (the so-called European or migrant lawyers, as opposed to domestic lawyers). It has been highlighted that the language requirements were contentious from the outset, as business lawyers in Luxembourg in practice require proficiency in other languages, such as English.[86] Nevertheless, the compatibility of these language requirements with the Luxembourgish Constitution was confirmed by the *Conseil disciplinaire et administratif d'appel*.[87]

However, the Law did not provide a detailed explanation of how to demonstrate a sufficient level of proficiency in these languages (French, German and Luxembourgish). In practice, for candidates in possession of a diploma of secondary school studies in Luxembourg, there is a presumption that the language conditions are met. For all other candidates, the Bar organises an oral hearing. It is important to note that candidates have the option to retake the examination. Furthermore, the Luxembourgish Bar is reputed to adopt a lenient approach towards language proficiency, with the majority of candidates reportedly succeeding in the examination.[88] The crux of the issue pertained to legal professionals who had been admitted to the Bar in another EU Member State and who sought to practise their profession in Luxembourg, leveraging the opportunities afforded by EU law.

In 2004, Mr Wilson, a practising English solicitor, initiated a legal challenge to the prevailing language requirements. Mr Wilson had been practising as a lawyer in Luxembourg since 1994 under his home-country title (member of the Bar of England and Wales since 1975). Pursuant to the language requirements stipulated in the Luxembourg Law of 2002, Mr Wilson was invited to attend a hearing to assess his proficiency in French, German and Luxembourgish. He refused to attend the hearing without the assistance of a lawyer, and the case was brought before the *Cour Administrative*. The latter body referred the matter to the European Court of Justice for a preliminary ruling. Concurrently, the European Commission initiated an infringement procedure against Luxembourg, citing the failure to adequately implement Directive 98/5 by requiring language proficiency for lawyers from other member states seeking to practise in Luxembourg under their home-country professional title. The judgments were delivered on the same day, confirming the incompatibility of the prior language test with Directive 98/5/EC.[89]

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[84] Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, *O.J.* L 77 of 14 March 1998, p. 36. The Directive is transposed in Luxembourg by the Law of 13 November 2002, *Mémorial A* no 140 of 17.12.2002, p. 3202. It should be noted that the addition of linguistic skills was not mandated by the Directive, which does not set out any such requirements.

[85] Art. 6(1)(d) of the Law of 10 August 1991 (Loi sur la profession d'avocat, *Mémorial A* 58 of 27 August 1991, p. 1110), as amended.

[86] M. THEWES, *La profession d'avocat au Grand-Duché de Luxembourg*, Brussels, 2015, p. 70.

[87] Judgment of 13 July 2004, 5/04, as reported by M. THEWES, *op. cit. (2015)*, p. 70.

[88] M. THEWES, *La profession d'avocat au Grand-Duché de Luxembourg*, Brussels, 2010, pp. 51 and 52.

[89] ECJ judgment of 19 September 2006, *Graham J. Wilson v Ordre des avocats du barreau de Luxembourg*, case C-506/04, ECLI:EU:C:2006:587; ECJ judgment of 19 September 2006, case C-193/05, *Commission of the European Communities v Grand Duchy of Luxemburg*, ECLI:EU:C:2006:588.

In its defence, the government of Luxembourg contended that lawyers must possess the capacity to communicate reliably with clients, the authorities, and professional bodies.[90] Nonetheless, the Court determined that Directive 98/5 does not permit the registration of a European lawyer to be contingent upon a hearing to ascertain the individual's proficiency in the languages of the relevant EU Member State.[91]

The Court observed that the European legislature has accomplished full harmonisation of the conditions for the registration of European (migrant) lawyers. In order to facilitate the exercise of freedom of establishment for these European lawyers, the legislature has opted against implementing a system of prior language tests. The Court rejected the argument that language skills are a prerequisite, citing the various safeguards in place. It emphasised that the use of the lawyer's home-country professional title signifies to clients that the lawyer has not qualified in the host Member State and does not inherently possess the language skills to address particular cases. Moreover, such European (migrant) lawyers may be obliged by national authorities to collaborate with a local lawyer. Additionally, the rules of professional conduct may also provide for sanctions if European lawyers handle matters for which they are not competent due to a lack of language skills.

Following this ruling, in 2007, Luxembourg abolished the language requirements for European lawyers wishing to practise in Luxembourg under their home-country title.[92] Nevertheless, the linguistic requirements were maintained as a condition for these migrant lawyers to become fully integrated into the Luxembourg Bar and to be entitled to practise before Luxembourg courts.

In 2012, the European Commission initiated new infringement proceedings and requested that Luxembourg permit European lawyers to become full members of the Luxembourg Bar, without the necessity of complying with any language requirements.[93] The Commission considered that there were less restrictive and more effective means of ensuring the efficiency of the legal system, the protection of clients and the linguistic heritage of the country. It was highlighted that the Luxembourg Bar maintains a publicly accessible list of lawyers, indicating their specialisations and the languages in which they practise.

Consequently, the law was revised again in 2013 to introduce amendments that allowed European lawyers to acquire the title of *avocat* in Luxembourg, provided they had practised in the country for at least three years under their home-country titles. A prerequisite for this acquisition was, however, the

[90] For a more detailed discussion of the pertinent Luxembourgish linguistic regime, see the Opinion of Advocate General Stix Hackl in the aforementioned case C-193/05 (*Commission vs. Luxembourg*). The government of Luxembourg contended that a lawyer practising under his home-country professional title may also provide counsel on Luxembourg law and, as such, must possess the requisite language skills to comprehend and interpret Luxembourg legal texts. Furthermore, the Luxembourg government emphasised that financial penalties imposed by law enforcement following traffic violations are typically expressed in German, as is the country's tax legislation, which necessitates the consultation of case law and commentaries written in German (pt. 25 of the Opinion). Furthermore, in instances where an individual representing themselves in court is from Luxembourg, they will typically utilise the Luxembourgish language before the lower courts, where there is no requirement to be represented by a legal professional (avocat à la cour). Furthermore, it is noteworthy that many Luxembourg nationals tend to utilise their mother tongue when consulting a lawyer (pt. 26 of the Opinion) and that the comprehensive professional code of the Luxembourg Bar is exclusively written in French.

[91] It is interesting to note that the Court adopts a prudent approach by focusing on the "*hearing*", rather than on the linguistic requirement itself. However, it should be noted that this is ultimately equivalent to the same thing (see pt. 70 of the Wilson judgment). For a more detailed analysis of the Court's reasoning, see S. VAN DER JEUGHT, Linguistic Obstacles for Migrating Professionals in the EU Internal Market: Time for a Legislative Overhaul, *Comparative Law and Language Journal (CLL)*, 2/2023.

[92] Law of 21 June 2007, *Mémorial* A no 101 of 26 June 2007, p. 1856.

[93] Second infringement proceedings, following the first ruling of the Court of Justice in the aforementioned case C-193/05 (*Commission/Luxembourg*). See Commission Press Release MEMO/12/708 of 27 September 2012, Infringements package: main decisions.

demonstration of proficiency in the legal language of Luxembourg, namely French.[94] In any event, European lawyers are required to restrict their professional operations to those domains that do not necessitate proficiency in German or Luxembourgish. In instances where such expertise is deemed essential, it becomes incumbent upon the individual to substantiate their command of German and Luxembourgish.[95] It is also important to note that lawyers who undertake activities for which they lack the necessary language skills may be subject to disciplinary sanctions.[96]

Furthermore, the level of language proficiency required is more precisely defined than was previously the case, and is currently based on the *Common European Framework of Reference for Languages* (CEFR) developed by the Council of Europe. Specifically, for the French language, proficiency in both active and passive knowledge at level B2 is mandatory.[97]

3.2.2 Medical personnel

A number of additional examples of language requirements can be found in the medical sector. According to the information provided on the website of the Ministry of Health, foreign higher education diplomas must undergo official translation into French, German or Luxembourgish in order to be recognised in Luxembourg.[98]

It appears that disparate linguistic requirements are in place for different medical professions. A general requirement of proficiency in either German or French is imposed on general practitioners, specialists, dentists, and veterinarians who have obtained their qualifications in other EU Member States and who wish to practise in Luxembourg.[99]

Candidates whose mother tongue is not French, German or Luxembourgish must provide proof of their language skills.[100] Evidence of this proficiency may be provided in any form, including but not limited to: a copy of training qualifications obtained in one of these languages or proof of professional experience in a French-speaking/German-speaking country. In the absence of any of the aforementioned documentation, candidates are required to submit a B2 level language proficiency certificate from an approved examination centre.

It is important to acknowledge that the regulations to which psychotherapists are subject are of an even higher order.[101] It is imperative that they possess not only proficiency in either German or French, but also an understanding of all three administrative languages (or acquire the knowledge to

[94] *Loi modifiant la loi modifiée du 10 août 1991 sur la profession d'avocat*, 13 June 2013, *Mémorial* A 102 of 21 June 2013, p. 1478. Arguably, this linguistic requirement could still be contrary to the Directive.
[95] M. THEWES, *op. cit.* (2015), p. 71.
[96] *Id*. p. 72.
[97] In the case of Luxembourgish and German, it has been determined that a passive knowledge level of B2 is required, in addition to an active knowledge level of B1. As far as can be ascertained, no further action was taken by the European Commission.
[98] See information available on the website of the Luxembourgish Ministry of Health, here as well as the general administrative portal guichet.lu. (accessed on 30 March 2025). English documents are accepted in the context of other medical professions. There appears to be no obvious reason why this should not also be the case more broadly, i.e. as to all medical professions.
[99] *Id*. The text on the website reads as follows: '*Vous devez posséder les connaissances linguistiques nécessaires à l'exercice de votre profession au Luxembourg. Si votre langue maternelle est autre que le français, l'allemand ou le luxembourgeois, une preuve des connaissances linguistiques est nécessaire pour exercer la profession. (...)'* (You must have the language skills necessary to practise your profession in Luxembourg. If your mother tongue is not French, German or Luxembourgish, you will need to provide proof of language skills in order to practise your profession – own translation. (…).
[100] *Id*. The minimum level of language proficiency in French or German that is required is that at level B2 of the Common European Framework of Reference for Languages (CEFR).
[101] *Loi du 14 juillet 2015 portant création de la profession de psychothérapeute*, *Mémorial* A 136, of 21 July 2015, art 2 e.

understand them).[102] The Minister may request a review of the language skills of a psychotherapist from the President of the Medical Council.[103] The more stringent linguistic requirements for this profession can be attributed to the fact that the EU professional qualifications directive does not apply to this profession (cumulated linguistic requirements in more than one language of the host country for those professions covered by that directive are not allowed).[104]

It appears that a greater degree of leniency is exhibited in the case of other medical professions, including but not limited to nurses, masseurs, midwives, dieticians, physiotherapists, orthophonists and ergotherapists.[105] With regard to linguistic requirements, the applicable law stipulates, under the heading "Familiarisation with the Luxembourg situation", that individuals practising these professions are obliged to acquire the language skills necessary to perform their professional activities in Luxembourg.[106] However, the law does not include any explicit mention of the necessity of specific language proficiency. Nevertheless, it should be noted that professionals may be subject to disciplinary, civil or criminal sanctions if mistakes are made in the exercise of their profession due to insufficient language skills.[107]

3.2.3 Teachers

Until 1996, Luxembourg required candidates for primary and secondary school teaching positions to be nationals of the country. Luxembourg's rationale for this requirement stemmed from concerns regarding the preservation of its national identity. The European Commission initiated infringement proceedings, and the Court of Justice ruled that while the preservation of national identity is a legitimate aim in itself, this interest can be effectively safeguarded by means other than the general exclusion of nationals of other EU Member States.[108] It is interesting to note that the Court pointed out that teachers would still have to fulfil all the conditions for recruitment, such as language skills. Consequently, the Court implicitly sanctioned a language requirement (Luxembourgish) for prospective teachers.

Indeed, candidates for teaching posts in Luxembourg are required to participate in an open competition, during which their written and oral proficiency in French, German, and Luxembourgish

[102] *Id*. « il doit avoir les connaissances linguistiques nécessaires à l'exercice de la profession, soit en allemand, soit en français, et comprendre les trois langues administratives du Grand-Duché de Luxembourg ou acquérir les connaissances lui permettant de les comprendre » (they must have the language skills necessary to practise the profession, either in German or French, and understand the three administrative languages of the Grand Duchy of Luxembourg or acquire the knowledge to enable them to understand them – own translation).
[103] *Id.*
[104] Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (*OJ* L 255/22 of 30.9.2005), as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ("the IMI Regulation"), *OJ* L 354/132 of 28.12.2013.
[105] Loi du 26 mars 1992 sur l'exercice et la revalorisation de certaines professions de santé, *Mémorial* A 20 of 16 April 1992.
[106] *Id*, art 11 (1) (Familiarisation avec la situation luxembourgeoise) : *« La personne exerçant une de ces professions est tenue d'acquérir les connaissances linguistiques nécessaires à l'exercice de son activité professionnelle au Luxembourg* ».
[107] *Id*.
[108] ECJ judgment of 2 July 1996, *Commission v Grand Duchy of Luxembourg*, case C-473/93, ECLI:EU:C:1996:263. It is very atypical that the preservation of national identity is considered to be a legitimate aim in itself, see S. SCHOENMAEKERS, *The identification of national identity in EU law: a Venn diagramming exercise*, Europarättslig Tidskrift, ScandinavianBook, 2024, p. 227-252.

is evaluated. Candidates may be exempt from one or more of the language tests if they can provide evidence of their proficiency, for example in the form of diplomas.[109]

3.2.4 Other (liberal) professions

In the case of liberal professions such as architecture, accounting, surveying, and construction consulting engineering, there are no evident linguistic stipulations.

However, it is evident that the trilingual context in Luxembourg is almost invariably pertinent to all professional activities. Research indicates that a significant proportion of employment opportunities, approximately one-third of all available positions, are concentrated in public and assimilated offices, as well as in educational institutions and small commercial enterprises. These positions are reserved for individuals who possess proficiency in all three administrative languages. As to other positions, French is the most frequently requested language in job offers, either explicitly or implicitly (91.3%), while Luxembourgish is frequently regarded as an asset, though it is not a prerequisite for employment.[110] It is noteworthy that job offers frequently do not explicitly mention language requirements. However, the language in which the advertisement is written (Luxembourgish, French or German) implicitly clarifies this aspect.[111]

In the Halbert case, the highest administrative court of Luxembourg, the Council of State (*Conseil d'État*), ruled that language requirements, imposed by the Mayor of Luxembourg, as a prerequisite for obtaining a licence as a taxi driver, constituted a violation of the freedom to work (*droit au travail*) laid down in the Constitution. The Council concluded that proficiency in a specific language is not an essential requirement for the effective performance of the profession of taxi driver, given that these individuals are engaged in transporting clients speaking a variety of languages, which are not necessarily the local ones.[112]

Finally, it should be noted that Luxembourgish law imposed a nationality requirement on notaries, on the grounds that proficiency in the Luxembourgish language was necessary for the effective exercise of that profession. As was the case with teachers (see above), the European Commission initiated infringement proceedings and ultimately the Court of Justice held that, while the preservation of the national identities of the EU Member States is a legitimate aim, that interest could be effectively safeguarded otherwise than by a general exclusion of nationals of the other EU Member States.[113] Nevertheless, the Court refrained from expanding the scope of its ruling to encompass the establishment of a mandatory language condition. In any event, in order to be considered for appointment as a notary in Luxembourg, candidates must demonstrate a level of proficiency in all three official languages of Luxembourg.[114]

4. Schooling system and language use

[109] See official government information 'Concours de recrutement des enseignants fonctionnaires de l'Enseignement secondaire', Session 2024-2025, available here (accessed 30 March 2025).
[110] I. PIGERON-PIROTH & F. FEHLEN, Les langues dans les offres d'emploi du Luxemburger Wort 1984-2004, Luxembourg, 2005, pp. 16, 24 and 27.
[111] *Id*. p. 11.
[112] Judgment of 21 March 1990: "*on ne saurait raisonnablement admettre que la connaissance d'une langue particulière soit indispensable à l'exercice de la profession de chauffeur de taxi, lequel est appelé à transporter jour par jour une clientèle d'expression diverse dont beaucoup sont incapable de lui tenir conversation dans sa langue".* Text available in D. SPIELMANN, M. THEWES & L. REDING, *Recueil de la jurisprudence administrative du Conseil d''Etat luxembourgeois (1985-1995)*, Brussels, 1996 (630), pp. 192-193.
[113] ECJ judgment of 24 May 2011, *Commission v Grand Duchy of Luxemburg*, case C-51/08, ECLI:EU:C:2011:336, pt. 124.
[114] Website of the Luxembourgish ministry of Justice, "le notaire", 18 July 2024, see here (accessed 30 March 2025).

4.1. Multilingual schooling system

The 1984 Law does not provide for a language policy in the education system. In essence, early childhood and pre-school education is designed to teach children Luxembourgish as a language of communication. However, a recent initiative has been implemented, namely a programme of multilingual education in crèches (nursery schools), with the objective of familiarising children with French.[115] A number of international schools also offer a diverse range of languages.[116]

At primary level (ages 6-12), instruction in reading and writing is, in principle, provided in German, with explanations frequently provided in Luxembourgish. In the second cycle, pupils are instructed in spoken French, while in the third cycle, instruction is focused on written French.[117]

In the initial years of secondary education, instruction is provided in German for all subjects except French and mathematics. From the fourth year, however, the secondary education system is largely divided into two categories: classical and professional schools. In the former, which prepares students for university, the language of instruction changes from German to French, but explanations are often given in Luxembourgish. In the latter, German predominates, with explanations in Luxembourgish.[118]

A study undertaken by the Council of Europe in 2006 demonstrated the extent of language teaching in Luxembourg's educational system. The study revealed that 39.4% of the curriculum for primary school pupils and 34.4% of the curriculum for secondary school pupils was devoted to language learning.[119]

The 2006 Report by the Council of Europe experts contained a number of critical observations regarding the Luxembourgish educational system. The report's conclusion was that the system is incapable of achieving its stated objectives, including, but not limited to, fostering social cohesion, integrating newcomers into the community, ensuring individual success, and cultivating a competitive economy. Of particular concern were the high rates of attrition, which were hypothesised to be associated with the system's multilingualism.[120] It is alleged in this regard that the emphasis on language instruction imposes a considerable burden on students in general, and on those from lower social classes and immigrants in particular.[121] It has been contended that the use of Luxembourgish has engendered a schism between educational policy and actual language use, as Luxembourgish is the language of integration in schools, while among migrant children French is employed as a lingua franca.[122]

However, the most recent Organisation for Economic Co-operation and Development (OECD) Country Note on the Luxembourgish educational system (2024) appears to offer more reassurance, as

[115] Official information Government of Luxembourg, "languages at School", available here (accessed 30 March 2025).
[116] On this new language policy in education, see J. REISDOERFER (2020), *op. cit.*, p. 107 - 109.
[117] *Id*. At the commencement of the 2022-2023 academic year, a pilot project was initiated in four primary schools with the objective of providing pupils with the opportunity to acquire literacy skills in French. Literacy in French is elective for pupils in cycles 1 and 2. The overarching objective of the initiative is to enhance the prospects of success for pupils by employing a flexible and diverse approach to language instruction.
[118] *Id*.
[119] Council of Europe, *Profil de la politique linguistique éducative – Grand-Duché de Luxembourg*, 2005-2006, Strasbourg, 2006.
[120] *Id*., p. 17.
[121] See in this regard also B. TAVARES & K. JUFFERMANS, *Language and (Im)mobility as a Struggle: Cape Verdean Trajectories into Luxembourg*, in K. HORNER & J. DAILEY-O'CAINE, (eds.), *Multilingualism, (im)mobilities and spaces of belonging*, Luxembourg, 2023.
[122] K. HORNER & J.-J. WEBER, *Multilingual education and the politics of language in Luxembourg*, in C. PEERSMAN, G. RUTTEN & R. VOSTERS (eds.), *Past, Present and Future of a Language Border*, Berlin/Boston, 2015, p. 246.

it estimates the proportion of 25-34 year-olds who have not attained upper secondary education at 11% (which is 3 percentage points below the OECD average).[123] Nevertheless, it was observed that grade repetition was marginally higher in Luxembourg in comparison to the OECD average.[124]

4.2 Language status and use

4.2.1 Status

Within a single sociopolitical entity, such as Luxembourg, where linguistic diversity is a hallmark, the existence of a certain degree of linguistic rivalry appears to be an unavoidable phenomenon, even in the context of a peaceful and harmonious society.[125] In this context, it has been asserted that French occupies the highest rank, primarily due to its status as the sole legal language, but also because of its prestige and social status, as only the most educated are able to speak French with ease.[126]

In recent years, the Luxembourgish authorities have, however, actively promoted the use of Luxembourgish. This commitment was formalised in March 2017 through the establishment of a strategy aimed at promoting the Luxembourgish language. The document outlines 40 measures, establishing the foundations for an action plan and facilitating the establishment of medium- and long-term initiatives aimed at developing the Luxembourgish language.[127] The document sets out four main commitments and objectives: firstly, to increase the importance of the Luxembourgish language; secondly, to advance the standardisation, use and study of Luxembourgish; thirdly, to promote learning Luxembourgish and learning about Luxembourgish culture; and fourthly, to promote culture in the Luxembourgish language.[128] On 20th July 2018, the Chamber of Deputies passed legislation with the aim of promoting the use of the Luxembourgish language.[129] Consequently, a number of bodies were established, including the Commissioner for the Luxembourgish language (*Commissaire fir d'Lëtzebuerger Sprooch*),[130] and the Centre for the Luxembourgish language (*Zenter fir*

[123] Organisation for Economic Co-operation and Development (OECD), *Education at a Glance 2024*, Luxembourg, available here (accessed 30 March 2025).
[124] *Id*. In Luxembourg, 3.6% of primary, 9.7% of lower secondary and 4.1% of general upper secondary students repeat a grade in their current level of education, while the OECD average is 1.5% at primary, 2.2% at lower secondary and 3.2% at general upper secondary level.
[125] A. FRANZISKUS, *'I Learnt English – the Wrong Thing, Eh' – Power, Interests and Language Practices among Cross-Border Workers in Luxembourg*, in H. KOFF, C. SCHULZ & P. GILLES, *Theorising Power through Analyses of Border Relationships*, Switzerland, 2013; R. POSNER, *Society, civilization, mentality: Prolegomena to a language policy for Europe*, in F. COULMAS (ed.), *A Language policy for the European Community – Prospects and Quandaries*, Berlin/New York, 1991, pp. 127 and 132.
[126] D. REDINGER, *Multilingual Luxembourg: Language Attitudes and Policies*, *op. cit.*, pp. 13 and 117.
[127] Promotion of the Luxembourgish language, site du ministère de l'éducation nationale, de l'enfance et de la jeunesse, available here and Une stratégie pour promouvoir la langue luxembourgeoise, available here (accessed 30 March 2025).
[128] *Id*. On 14 December 2022, the Government adopted the Action plan for the Luxembourg language comprising 50 measures grouped around the following three pillars: *Lëtzebuergesch léiere fir jiddwereen* – Learning Luxembourgish for everyone; *Visibilitéit a Gebrauch vum Lëtzebuergeschen* – Visibility and use of Luxembourgish; *Lëtzebuergesch virundreiwen* – Promotion of the Luxembourgish language.
[129] Loi du 20 juillet 2018 relative à la promotion de la langue luxembourgeoise (…), *Mémorial* A 646 of 3 August 2018.
[130] The commissioner is responsible for implementing an action plan for the promotion of Luxembourgish and for recommending new complementary measures in favour of the language. He also ensures that there are sufficient opportunities to learn Luxembourgish, both in the Grand Duchy and abroad, and that adequate teaching materials are available. He also sees to it that complaints concerning the use or non-use of Luxembourgish in public services, the visibility of Luxembourgish at all levels and research into Luxembourgish are duly investigated. Pierre Reding was appointed as commissioner on 1 January 2023.

d'Lëtzebuerger Sprooch).[131] It has been observed that public signage, which was traditionally only in French since the Second World War, is increasingly bilingual in French and Luxembourgish.[132]

In addition, to acquire Luxembourgish nationality, proficiency in Luxembourgish and not French is required.[133]

Further to the status of Luxembourgish, it should also be noted that, in contrast to the case of German or French, Luxembourgish does not (yet) have any EU language status.[134] Firstly, a historical explanation can be given: in 1952, when the European Community of Coal and Steel (ECSC) was set up and Luxembourg was one of the founding Member States, the Luxembourg language had no legal status in the Grand Duchy. As elucidated in section 2, it was not until 1984 that Luxembourgish was granted such legal recognition.

Furthermore, given that all laws in Luxembourg are enacted in French only, it is debatable whether Luxembourgish could be recognised as an EU language.[135] It should be noted that Luxembourg has not submitted an official request to the EU for recognition as an official EU language.[136] Nevertheless, in 2024, the Commissioner for the Luxembourgish language was quoted in the press as follows: "*Our own laws are written in French, so we do not want every word or document to be translated in Luxembourgish. We are able to read things in other languages*".[137] He proposed a compromise solution, namely that the EU Treaties should be translated into Luxembourgish and that Luxembourgish should be recognised as a language that can be used to interact with the EU institutions.[138]

Article 55(2) of the Treaty on European Union (TEU) stipulates indeed that the Treaty may also be translated into any other languages as determined by EU Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. Furthermore, EU Member States may enter into administrative agreements with EU institutions and

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[131] The *Zenter fir d'Lëtzebuerger Sprooch* (ZLS) is responsible for the Luxembourgish language and the linguistic situation in the Grand Duchy, as well as the promotion of Luxembourgish at national and international level.

[132] On 24 March 2025, Luxembourg Railways announced that it would provide signage in French and Luxembourgish for all stations by 2026 at the latest. (Panneaux bilingues*, L'Essentiel*, 24 March 2025).

[133] The Law on Luxembourg nationality (available here in English) stipulates that candidates for naturalisation, and in certain cases by optional declaration, must pass a Luxembourg language test and obtain an integration certificate ('Vivre ensemble au Grand-Duché de Luxembourg', which guarantees knowledge of the fundamental rights of citizens, the state and local institutions of the Grand Duchy of Luxembourg, as well as Luxembourg history and European integration). However, those who have lived in Luxembourg for at least 20 years only need to attend 24 hours of Luxembourg language classes.

[134] In October 2024, it was reported that a Luxembourg MEP (Fernand Kartheiser) intervened in the European Parliament in Luxembourgish. His microphone was cut off because Luxembourgish is not an official language of the EU (*L'Essentiel*, 22 October 2024). See also J. GAULIER, "Je veux un autre statut pour la langue luxembourgeoise", *L'Essentiel*, 23.10.2024, p. 2.

[135] See, for a more in-depth analysis, S. VAN DER JEUGHT, *Linguistic Autonomy of EU Institutions, Bodies and Agencies*, *Zeitschrift für Europäische Rechtslinguistik* (ZERL), 2/2021.

[136] Such a request must be made at an intergovernmental conference, as it requires a treaty change. In September 2010, Luxembourg's Foreign Minister Jean Asselborn rejected a request by the Alternative Democratic Reform Party (ADR) to make Luxembourgish an official language of the European Union, citing financial reasons and the fact that German and French, already official languages, were sufficient for Luxembourg's needs ("De l'usage de la langue luxembourgeoise dans le contexte européen : Une question parlementaire de Fernand Kartheiser, available here, accessed 30 March 2025). An interesting point is that if Luxembourg ever decided to adopt all laws in Luxembourgish and to give this version precedence over the French version, it could be argued that Luxembourgish would indeed qualify for the status of official/working language under the EU Treaty.

[137] S. RAO, Luxembourgish celebrates its 40th birthday as a national language, 24 February 2024*, Luxembourg Times.*

[138] *Id*.

bodies to permit the official use of additional languages.[139] Accordingly, the Spanish Government has signed administrative agreements with several EU institutions and bodies. These agreements provide for the limited use of Catalan, Basque and Galician.[140] As a matter of fact, rather than granting direct language rights, the arrangements establish essentially a translation procedure: citizens may submit a written request to a competent national body, which will then forward the request together with a certified translation to the EU institution or body concerned. The latter replies, in the official EU language of the EU Member State concerned, to the national body, which translates the reply and sends it to the person concerned. It is therefore evident that Luxembourg could indeed pursue these avenues for Luxembourgish to enhance its position in the EU.

4.2.2 Daily language use

Assessing everyday language use in Luxembourg is a significant challenge given the country's official trilingualism, which includes French, Luxembourgish and German. This established linguistic framework is complemented by the frequent use of English, Portuguese and a variety of other languages.[141]

In any case, the relative percentage of daily use of Luxembourgish is decreasing. While 55.8% of the population declared Luxembourgish as their main language in 2011, less than half (48.9%) did so in 2021.[142] This is mainly due to the rapidly changing demographics with a high immigration rate.[143]

The most recent Eurostat data (2024) on Luxembourg confirm these findings and show a sharp decline in the number of residents claiming Luxembourgish as their mother tongue.[144] This figure has fallen by 14 percentage points in about a decade, from 52% to 38%, compared to the Eurostat survey of 2012. This decline is in line with the results of the aforementioned OECD survey, which showed that around 67% of primary school pupils stated that their first language at home was not Luxembourgish.[145] This is also in keeping with the Eurostat 2024 survey, which shows that 19% of respondents consider Portuguese to be their mother tongue (+1), 17% French (+1), 7% German (+5) and 3% Italian (-3).[146]

The Eurostat survey (2024) provides further noteworthy insights in this regard. The survey revealed that 77% of residents can hold a conversation in French, in contrast to only 28% in Luxembourgish. It is also significant that English is clearly on the rise as a common language, with 68% of residents claiming to be able to hold a conversation in it (French has fallen by three percentage points, while English has risen by no less than 12 points in just a decade).[147] It is noteworthy that 59% of

[139] Council Conclusions of 13 June 2005 on the official use of additional languages within the Council and possibly other institutions and bodies of the European Union, *OJ C* 148/1 of 18 June 2005. The Council does not specify the legal basis, but refers to the principle of linguistic diversity.
[140] See, for instance, administrative arrangement between the Kingdom of Spain and the Council of the European Union, *OJ C* 40/2 of 17 Fenruary 2006 and administrative agreement between the European Commission and the Kingdom of Spain, *OJ C* 73/14 of 25 March 2006.
[141] See F. FEHLEN, P. GILLES, L. CHAUVEL, I. PIGERON-PIROTH, Y. FERRO & E. LE BIHAN, *Recensement de la population 2021, Une diversité linguistique en forte hausse*, STATEC, Luxembourg, available here.
[142] *Id.*
[143] *Id*.
[144] Special Eurobarometer 540, Europeans and their languages, *op. cit.* The question was formulated in the following terms: "*Thinking about the languages that you speak, which language is your mother tongue*?", see here.
[145] Organisation for Economic Co-operation and Development (OECD), *Education at a Glance 2024*, Luxembourg, available here (accessed 30 March 2025).
[146] Special Eurobarometer 540, Europeans and their languages, *op. cit*.
[147] *Id.* The question was formulated in the following terms: "*And which other language, if any, do you speak well enough in order to be able to have a conversation?*"

respondents indicated their ability to converse in German, a figure that significantly surpasses that of Luxembourgish.[148]

Despite an observed increase in the use of Luxembourgish (as compared to the 2012 Eurostat survey, which found that only 18% of respondents indicated they could speak it well enough to hold a conversation), it is evident that considerable progress is still required before Luxembourgish can be considered a viable overarching lingua franca among all residents. This outcome is particularly uncertain in light of the general demographic evolution of the country. In line with this, a survey of residents' preferences for additional languages to be learned for personal development, excluding their mother tongue, revealed the following order of preference: French (62%), English (46%), German (34%), and Luxembourgish (20%).[149]

It is evident that the allegations made since the close of the previous century concerning the potential risks to social cohesion arising from the emergence of distinct communities, with one community (diminishing) using Luxembourgish as its first language of communication and the other using French, as its first (or only) language of communication, have been borne out.[150] A novel element in this equation is also the sharp increase in the use of English by part of the international community living in Luxembourg who do not speak French, Luxembourgish or German.

5. Concluding remarks

Fairy tales usually end with the phrase "*And they lived happily ever after*".[151] The question of whether this ending applies to the Luxembourgish language regime is still open.

From a purely legal point of view, the primary feature of Luxembourg's language law is the absence of clear definitions of linguistic rights. Indeed, the 1984 Law on the use of languages is concise and does not define the precise circumstances in which each of the three languages can be used. Additionally, it fails to delineate the precise legal status of the national language, Luxembourgish (which, although not employed for legislative purposes, has attained primary constitutional status in 2023), and the three administrative and court languages.

In practice, the multilingualism of Luxembourg's legal system is incomplete, as the three languages do not have the same status. French is the language of law, and thus takes legal precedence. Consequently, it can be deduced that, de facto, all citizens should possess a certain degree of proficiency in French in order to comprehend their rights and obligations as enshrined by law. It is also noteworthy that even the 1984 legislation which grants language rights is only available in French.

Furthermore, the enforceability of language rights is constrained. While all three languages are recognised as administrative languages, the administration is under no mandatory obligation to interact in the language selected by the applicant, but rather, merely to the greatest extent feasible.

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[148] *Id.* See in this regard also: H. SIEBURG, '*Luxemburger Standarddeutsch': on the future of the german language in Luxembourg*, in R. MUHR & B; MEISNITZER (eds.), *Pluricentric languages and non-dominant varieties worldwide: new pluricentric languages – old problems*, Frankfurt, 2018, p. 262-282.

[149] *Id.* The question was formulated in the following terms: "*Thinking about languages other than your mother tongue, which two languages do you think are the most useful for your personal development?"*

[150] PH. MAGÈRE, B. ESMEIN & M. POTY, *op. cit*., 98.

[151] The phrase is said to first appear in the 1702 English translation of Boccaccio's *Il Decamerone*, which the Oxford English Dictionary lists as the earliest citation for the phrase: "Paganino, hearing the news, married the widow, and as they were very well acquainted, they lived very lovingly and happily ever after".

Notwithstanding these legal observations, linguistic disputes are conspicuously absent in the realms of administrative and constitutional law. The general consensus on the role and status of languages in Luxembourg is remarkable. This state of affairs is often referred to as *'paix des langues'*. This suggests that the Luxembourg language regime may be regarded as a noteworthy example, with the potential to serve as a model for other multilingual countries.

However, it should be noted that the specific linguistic situation is unique and probably inimitable, as demonstrated in the historical overview in section 2, which reflects the country's historical struggle for national sovereignty and identity, encapsulated by the Grand Duchy's national motto, *Mir wëlle bleiwe wat mir sin* (We want to remain what we are). Following centuries of foreign domination, a peaceful coexistence of languages within a single territory has emerged. The linguistic regime has been shaped not only by history, but also by the specific nature of Luxembourg society, which is small but extremely diverse, with approximately half of the population being of foreign origin. This linguistic landscape, characterised by its diversity and inclusivity, serves as a testament to Luxembourg's identity as an open and tolerant society.

In sum, there are no (modern) fairytales without a twist or some suspense. The most significant challenge Luxembourg is currently facing is its rapidly changing demographics. The trilingual nature of Luxembourg, a distinctive attribute among European countries, presents significant challenges to the integration of non-Luxembourgish nationals. The ability to communicate in Luxembourgish is a prerequisite for attaining full integration into Luxembourgish society and a legal condition for acquiring nationality. Proficiency in French is also essential, as it is the language of legislation. German retains its significance as a language of communication. In addition, professional immigrants are likely to work in English in Luxembourg. This linguistic diversity, coupled with the native languages of foreigners, leads to an ideal, albeit somewhat utopian, proficiency in at least five languages. In this regard, it is an inconvenient and paradoxical truth that it is easier to integrate as a foreigner in a monolingual political entity, as the newcomer only needs to know one language of the host country. This phenomenon was elucidated in section 3 in the context of the language requirements for the liberal professions in Luxembourg. In a similar vein, the multilingual school system poses a particular challenge for immigrant children who have a different, sometimes even multilingual, background at home.

Luxembourg society must therefore continue to demonstrate its capacity for adaptability in order to preserve the precarious equilibrium between the safeguarding of its identity, the promotion of social cohesion, and the nurturing of multilingualism. This ability has been developed over several centuries, particularly in light of Luxembourg's geographical position on the germanic-romance linguistic border, as articulated by *Michel Rodange*, the national poet:[152]

‚Ech liesen', sot de Wollef,
‚Op d'éischt Gesiicht eenzock,
't sief däitsch an och franséisesch,
An d'Schrëft als wi den Drock.

('I can read,' replied the Wolf,
'and at first sight succinct,
French as well as German script,
handwriting and in print.')

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[152] M. RODANGE, Reenert song 9, 53, 1872, see THILL, J., *The fox in a Sunday Suit and in Human Shape - De Fuuss am Frack an a Maansgréisst, Luxembourg*, 2022, available here.

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Introduction

This book review discusses four volumes with almost identical names that were published between 2021 and 2024. They are all about the legal-linguistic analysis of EU texts and legislative procedures. While I find the topic of the volumes very interesting also for the readers of this journal, I was sceptical about the fact that they are all based on the same summer school sessions and document the work carried out during them. In my review, I will address the reasons for my scepticism, but also demonstrate why characteristics of the volumes mitigate it.

Background information

Until 2021, it was possible to study a so-called "Verbundstudiengang Europäische Rechtslinguistik" at the Universität zu Köln (University of Cologne). This study programme was located in the Faculty of Arts and was affiliated with the Department of Romance Languages. Students had to study French and work with English and potentially other foreign languages, and pass exams to obtain a basic qualification in law. The programme aimed to educate professionals for employment in law firms and within the EU, equipping them with the legal skills necessary for interpreting legal texts in accordance with standard legal principles, as well as the multilingual proficiency required for understanding, comparing and translating legal texts in multiple languages.

Prof. Dr. Isolde Burr was the main initiator and head of the study programme throughout its existence. As well as being a professor of French Philology with thorough linguistic skills, she has long-standing experience of working with communication, especially the development and interpretation of meaning, in legal settings. This makes her an effective bridge builder between law and language, and she has established an impressive network of professionals interested in both fields and their intersection. Prof. Burr is the main editor of the four volumes.

Thanks to Prof. Burr's network, students on the programme were able to visit the Court of Justice of the EU and gain a thorough understanding of legal interpretation theory and practice in a multilingual setting. Furthermore, workshops with professionals and linguistic and legal scholars were organised for students in Cologne.

The experience from such excursions and workshops functioned as a basis for establishing a series of summer schools in this field, titled "Cologne Summer School in European Legal Linguistics". Focusing on the legislative and judicial process of the EU, these summer schools have been held every year since 2020. Following each event, a book has been published to document the work carried out during the summer school. As already indicated, this review focuses on the four volumes published in connection with the 2020, 2021, 2022 and 2023 events. I have chosen this somewhat unconventional format because the books are part of a series with some repeated elements, making it most relevant to present and evaluate them as a whole.

Structure and content of the books

The books relate to each year's summer school sessions. They have a combined character: on the one hand, they document the students' group work on specified assignments during the sessions, as well as the work of researchers and practitioners who act as lecturers and commentators before or after the group work. On the other hand, parts of the book seem to be aimed at a larger audience than just the participants. Probably for this reason, the books carry the label 'Dossier'.

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In more detail, the books contain the following elements:

- Participants
- Schedule for the event
- Brief report
- Welcome speeches
- Reading list
- Preparatory tasks for working groups before the event as well as tasks specifically for the attendance phase
- Slides from lectures at the event
- Final results of group work on the above-mentioned tasks
- Academic works on questions extracted from especially the preliminary results of the preparatory tasks

Elements such as the lists of participants, the schedule and the welcome speeches are primarily of interest to those attending the summer schools. However, the books contain a majority of elements that are also of interest to non-participants, especially those interested in comparative legal linguistics and EU lawmaking. I will therefore focus my presentation of the books on these elements.

As the books have their roots in the summer schools, the central focus is on the EU's legislative procedure. During the pre-event phase, participants work together online to complete preparatory tasks described in the books. With the exception of the first volume, these tasks are always connected to ongoing legislative processes at the time of the summer school. Participants (and readers) have access to texts from all the institutions involved in the legislative process under study, with a particular focus on the EU institutions Parliament, Council and Commission. There are two types of tasks reported in the volumes. The first type involves participants working with questions of a more linguistic nature, such as comparing words chosen for specific central concepts in different languages based on their respective profiles in each language. The second type of task is more legal and institutional in nature. Participants are asked to reformulate articles from the perspective of one of the involved institutions, with the aim of achieving the intended legal effect and reaching compromises during the EU's trilogue process, in which the institutions collaborate to create a unified version of the legislation. Thus, the tasks require linguistic and legal expertise.

The following legislative projects are treated in the four books:

- 2021: Directive 2008/115/EC (return directive) on common standards and procedures in Member States for returning illegally staying third-country nationals.
- 2022: 2020/0340/COD on European data governance, amending Regulation (EU) 2018/1724.
- 2023: 2021/0050/COD on equal pay for equal work between men and women
- 2024: 2021/0106/COD, Artificial Intelligence Act

The results of the preparatory work of the groups on these projects are reported separately in the volumes.

During the attendance phase, participants are given the same set of tasks (mainly comparative linguistic and institutional comparative legal, respectively) and the tasks are included in the volumes. Participants receive introductions to EU institutions, legislative procedures and the general European legal linguistic approach developed by the organisers of the summer schools, as well as presentations by practitioners from the European institutions, in connection with their work on the tasks. The volumes contain these presentation slides, as well as the results of the attendance phase tasks in slide format.

The final type of element, which is, however, not present in the most recent volume, is academic work by the editors on legal-linguistic and comparative legal topics. These academic works depart from the topics covered in the tasks and are inspired, to some extent, by the problems experienced by students when working on them. The works in the first three volumes have the following titles:

- 2021
    - Terminology in language for special purposes: “compassionate reasons”

    - The concepts of “public order” and “public policy” in the Directive 2008/115/EC and in the legislative procedure 2018/0329(COD)
    - Linguistic issues in Directive 2008/115/EC and its recast
- 2022
    - (Data) Altruism and the Law
    - “Act” – Remarks on Short Titles of EU Legislation
    - Modal Expressions in EU Legal Acts
    - Relational Expressions Signalling the Legal Relationship between Provisions – Concurrency, Conflict, Concession or Condition
    - Legal Definitions – Mediating between their Legal and Linguistic Descriptions
- 2023
    - Sanctions vs. Penalties
    - Modification, Coordination, Scope Ambiguity, Structural Ambiguity and Crosslinguistic Mismatch - Beware of the Comma
    - A Short Note on Intersectionality and EU Law – The Concept, its Prospects and Potential Pitfalls

As can be seen from the lists, there is a bias towards works with a linguistic starting point, but this perspective is always informed by legal considerations.

Evaluative remarks

As previously mentioned, the books under review are characterised by their strong relationship with the summer school sessions from which they emerged. Consequently, most of the texts that make up the books document the results of the participant groups. However, the topics covered are chosen to be generally relevant to the field of comparative legal linguistics in the EU. Furthermore, the tasks generally concern legislative procedures that were ongoing at the time of the sessions and are therefore still recent enough to be of general interest. Finally, the group work is based on extensive reading in line with the reading lists included in the volumes. Consequently, the results are valuable contributions to ongoing discussions in the field based on their content. However, the chosen presentation format (slides from oral presentations) limits the value of the results for such ongoing discussions. Here, the documentation function takes precedence over a more general academic function that could have been achieved through a format more akin to an article, where, for example, it would have been possible to include references to the underlying publication more thoroughly.

On the other hand, such a format has been chosen for the part of the volumes that, in my view, constitutes their major contribution to scholarly discussions in the field: the academic works. These works are of general interest and are based not only on discussions in the summer school sessions, but also demonstrate a broad foundation on relevant scholarly writings. Actually, the academic works in themselves justify the publication of the 'Dossiers'. It is therefore a pity that the fourth volume does not contain this element.

Apart from this contribution, the 'Dossiers' may also provide inspiration for planning teaching sessions in comparative legal linguistics. The topics covered are of general interest, and the volumes offer reading lists, introductions, tasks and even possible solutions, making it easy to develop new assignments and course elements based on them.

Therefore, notwithstanding my initial scepticism expressed above, my final evaluation is that the volumes constitute an interesting source of knowledge and experience which may play an important role in the further development of the field of comparative legal linguistics, especially concerning the EU, specifically from the point of view of its teaching practice.